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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

07 Cr. 1170 (LAP)

5 JOSEPH P. COLLINS,

6 Defendant.

7 -----x

October 15, 2012
9:35 a.m.

8 Before:

9 HON. LORETTA A. PRESKA,

10 District Judge

11 APPEARANCES

12 PREET BHARARA

13 United States Attorney for the
Southern District of New York

14 BY: HARRY A. CHERNOFF

MICHAEL A. LEVY

15 EDWARD A. IMPERATORE

Assistant United States Attorneys

16 COOLEY LLP

17 Attorneys for Defendant

18 BY: WILLIAM SCHWARTZ

JONATHAN BACH

LAUREN GERBER LEE

19 - also present -

20 Kathryn Searles

21 Robert Clark,

Postal Inspectors, U.S. Postal Inspection Service

22 Gary Smith,

23 Paralegal, U.S. Attorney's Office

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1 (Trial resumed; jury and defendant not present)

2 THE COURT: Good morning, counsel. How are you?

3 MR. LEVY: Good morning, your Honor.

4 MR. SCHWARTZ: Your Honor, the defendant is not here
5 at the moment but waives his presence for the pretrial --

6 THE COURT: Yes. Thank you.

7 Counsel, I know you wanted to discuss the objections
8 that we started talking about on Friday. Where would you like
9 to begin, please?

10 MR. SCHWARTZ: Your Honor, I'm not sure I have very
11 much to add to what I said on Friday. But in particular, with
12 respect to the piece of the transcript that is at 2365, the
13 question and answer starting at line 24 going through line 1 on
14 2366, our objection to that, as I stated, was both relevance
15 and hearsay.

16 I would note for the Court that later on in the same
17 witness, a similar answer was given. Mr. Bach moved to strike
18 the answer, and Judge Sand struck the answer at 2552. I guess
19 that is earlier on.

20 THE COURT: Twenty?

21 MR. SCHWARTZ: 2553.

22 THE COURT: 23, do you mean? 23 or 25?

23 MR. SCHWARTZ: It is 25.

24 THE COURT: OK.

25 MR. SCHWARTZ: 52. I guess that is later.

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1 THE COURT: Yes. That was my confusion.

2 MR. SCHWARTZ: Mine, too. Sorry, your Honor.

3 THE COURT: If we could do numbers we would be
4 doctors.

5 MR. SCHWARTZ: At line 8, in response to a question
6 where he gave a fairly long answer, he says at line 8, "Even
7 clients who did not know the structure of Refco were leery of
8 that transaction and backed out of that transaction."

9 And, "Objection, Judge.

10 "The last sentence is stricken."

11 We think that is a similar kind of thing, your Honor.
12 This is the state of mind of somebody who was not present
13 testifying about the state of mind. It is not relevant, and to
14 the extent it is relevant it is unfairly prejudicial, and it is
15 hearsay.

16 With respect to --

17 THE COURT: Could I -- let me just hear what the
18 government has to say on this one. I'm too easily confused by
19 doing two at once.

20 MR. LEVY: Your Honor, as to the hearsay problem, I
21 think that was solved by Judge Sand's instruction, and we would
22 satisfied with a similar instruction from your Honor that it is
23 not coming in for its truth.

24 With respect to relevance, it is a fairly limited
25 statement that the defense had no -- I won't say had no

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1 objection to, but certainly didn't preserve their objection to
2 when the next day they didn't take it up.

3 It is a fairly limited statement in which Mr. Maggio
4 essentially explains the actions that follow, that this company
5 had reservations and pulled out and as a result he had to go
6 find other people.

7 I think in his going and finding other people, or
8 other companies to do these transactions, it is relevant that
9 he knew that this was something that he had to be careful
10 about. I think he makes that point at other points in his
11 testimony, that he had to be careful about who was in and who
12 was out on this thing because on their face these documents
13 gave some suggestion that there was -- that there was something
14 fishy afoot.

15 THE COURT: The "he" in that sentence who had to be
16 careful is?

17 MR. LEVY: Is Mr. Maggio, that that is his
18 understanding when he is going in and selecting lawyers to work
19 on it and when he is going and selecting companies to
20 participate in it, that these documents make people nervous.

21 There can be an instruction that Mr. Maggio's belief
22 that these documents make people nervous, at least in this
23 context, is not coming in for its truth but just for that
24 purpose of explaining what he did.

25 It is one sentence, and it was certainly not so

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1 problematic in the first trial that they felt the need even to
2 seek it to be stricken even when they were having --

3 THE COURT: Yeah, yeah, yeah.

4 MR. SCHWARTZ: Your Honor, this is a case in which
5 your Honor heard the opening statement, and we believe the
6 testimony will bear it out -- certainly the cross-examination
7 of this witness will bear it out -- that nobody ever told
8 Mr. Collins the illegal purpose of these loans, and that he
9 only saw two-thirds of the transaction. That somebody else
10 felt nervous, which is hearsay, even with an instruction, your
11 Honor, is really unfairly prejudicial.

12 If the government wants to make an argument that this
13 is obvious from its face, they should make the argument that it
14 is obvious from its face. Mr. Maggio's recounting of what
15 somebody else told somebody at Refco who told it to him is
16 absolutely way out of the park.

17 THE COURT: Anything else on this one?

18 MR. LEVY: Not from the government, your Honor. Thank
19 you.

20 THE COURT: All right. I'll permit it with a limiting
21 instruction for the reaction of the conspiracy to these two
22 entities having severe reservations about doing these
23 transactions further.

24 If you would like to -- do you want the same
25 instruction that was given on, or something similar, on page

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1 2366?

2 MR. SCHWARTZ: We would like an instruction that at
3 least says, your Honor, as well in addition to what Judge Sand
4 said, that you may not consider for the truth that they
5 actually felt this way, only for Mr. Maggio's state of mind.

6 MR. LEVY: We don't have an objection to that, your
7 Honor.

8 (Pause)

9 THE COURT: Thank you. With respect to the material
10 on -- is it 2377? What is the other one, Mr. Schwartz?

11 MR. SCHWARTZ: It is 2378, lines 2 to 7, your Honor.

12 THE COURT: 2 to 7?

13 MR. SCHWARTZ: Nope. That leaves out the question.
14 I'm sorry. It's 2377.

15 THE COURT: Right. Starting at 24?

16 MR. SCHWARTZ: Right, through the answer I just
17 recited.

18 (Pause)

19 THE COURT: And the objection, sir?

20 MR. SCHWARTZ: Again, your Honor, this is Mr. Maggio's
21 state of mind. It is unfairly prejudicial. It should not be
22 imputed in any way to the defendant's state of mind.

23 If your Honor is inclined to go against us, we would
24 like a limiting instruction to that effect.

25 (Pause)

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1 THE COURT: I think I'm not clear as to why it is
2 objectionable as to Mr. Maggio's state of mind with respect to
3 these transactions.

4 MR. SCHWARTZ: Your Honor, I would argue that -- I
5 understand the relevance, but I would argue that it is unfairly
6 prejudicial because of the central defense argument in the case
7 again, which is that Mr. Collins was unaware of the third leg
8 and Mr. Maggio was testifying that from, as far as I'm
9 concerned, all you need to see is two of them. And if your
10 Honor, as I said, is inclined to permit the testimony, we would
11 ask that a limiting instruction be that you cannot impute
12 Mr. Maggio's state of mind to Mr. Collins.

13 THE COURT: Why is that necessary, please?

14 MR. SCHWARTZ: Because the government is going to
15 argue from this, from Mr. Maggio's state of mind, that the
16 defendant knew, everybody knows, that Mr. Maggio told you,
17 ladies and gentlemen, that when he saw the two legs he was
18 concerned about giving them out to anybody else at Refco.
19 Don't you think Mr. Collins had the same feeling as Mr. Maggio?

20 THE COURT: Mr. Levy.

21 MR. LEVY: If I may, your Honor?

22 Mr. Maggio is one of the co-conspirators in this case,
23 so it sort of puts this on different footing from what we had
24 been talking about in the rest of the trial. I'm sure that in
25 closing the defense will make the argument that Mr. Maggio knew

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1 about all three legs, and their position is that Mr. Collins
2 only knew about two of the legs and their position is that that
3 puts Mr. Collins on different footing from Mr. Maggio.

4 But Mr. Maggio, as a co-conspirator saying these
5 things on their face reads and I knew it as a co-conspirator,
6 talking about his state of mind, which is something we do need
7 to prove, the co-conspirator's state of mind in the conspiracy,
8 I don't see why this is a problematic statement at all.

9 MR. SCHWARTZ: You can't prove someone's state of mind
10 by somebody else's state of mind.

11 THE COURT: Well, it goes without saying. I don't see
12 why an instruction is necessary here. The only thing Maggio is
13 saying in his answer, "Because I figured if they took a look at
14 it, somebody in my firm with anything up here would take a look
15 at the documents and realize that they were back-to-back loan
16 documents with a group guarantee to a company outside the
17 consolidating group, and they would have questioned it and
18 could have raised concerns to Dennis or somebody else."

19 It doesn't have anything to do with anybody else's
20 statement.

21 MR. SCHWARTZ: Your Honor, I've made my argument.

22 THE COURT: OK. The objection is overruled, and I see
23 no need for any kind of limiting instruction.

24 Anything else, friends?

25 MR. LEVY: Your Honor, I would just like to note that

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1 we are coming close to the point where a ruling on the
2 Berger/Sullivan -- well, I think a ruling overall on whether or
3 not lay opinion testimony and the opinion of Mr. Trosten --

4 THE COURT: OK. I guess I thought that the government
5 had adjusted its position on the lay opinion in light of its
6 not asking Mr. Schoen for his opinion as to whether or not the
7 PPA had to be disclosed.

8 MR. LEVY: I think that's right, your Honor. I think
9 at this point what we plan to do with all of the witnesses,
10 save for Mr. Trosten and Mr. Berger, we do not intend to ask
11 any of those witnesses is it your opinion that this should have
12 been disclosed, is it your opinion that this was a fraud.

13 Mr. Trosten will say, I believe, that I was engaged in
14 a fraud, I had criminal intent. But he is a co-conspirator; he
15 has to be allowed to say that.

16 And Mr. Berger will say -- he will not even testify,
17 assuming he doesn't slip up -- I believed the things that I
18 told Mr. Collins. He will just say I had a meeting with
19 Mr. Collins at which I told him the PPA needed to be disclosed
20 for the following reasons.

21 THE COURT: But the defense doesn't object to that
22 testimony?

23 MR. LEVY: I think that's right.

24 I will warn you that in prepping it gets awfully hard
25 for him not to say I told Mr. Collins that I felt the PPA

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1 needed to be disclosed. I'm hoping he won't say that, but I
2 think it is a minor variance in the wording that can easily be
3 dealt with in an instruction.

4 MR. SCHWARTZ: I assume we will be able to explore the
5 evolution of Mr. Berger's state of mind after he makes that
6 statement from Mr. Berger to Mr. Collins.

7 MR. LEVY: I don't believe we are putting anything in
8 about Mr. Berger's state of mind. We are putting in words that
9 were spoken by Mr. Berger to Mr. Collins. He will not say I
10 believe this to be true. He will just say I told Mr. Collins,
11 and I think they should be absolutely precluded from getting
12 into anything having to do with Mr. Berger's state of mind.

13 MR. BACH: Judge, Mr. Berger is making the
14 statement -- and I understand the government is trying to limit
15 this very carefully, but it is nevertheless a statement of his
16 state of mind. He's telling his opinion to Mr. Collins at a
17 meeting.

18 And what happened here is that, assuming Mr. Berger's
19 account is true, he stated his opinion at time one. What
20 happened is at time two, time three, time four steps are taken
21 that cause Mr. Berger to change his view so that he is inclined
22 to go forward with the transaction without disclosure of the
23 PPA. And we have to -- in order to get the facts out, we have
24 to be able to have some latitude in showing what actually
25 happened in the course of conduct here between Mr. Collins and

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1 the McDermott, Will attorney. It is fundamental to our
2 defense.

3 Otherwise -- otherwise -- the jury just sees time one
4 and gets a very truncated picture of what the facts are, and it
5 is misleading without being complete and put in full context.

6 MR. LEVY: Your Honor, if there is some conversation I
7 am unaware of later on in which Mr. Berger expresses his
8 opinion on this transaction to Mr. Collins at time two, three
9 or four, I think we would probably be OK with that. If there
10 are things that Mr. Collins observed, facts that he would have
11 known about, I don't think, without knowing exactly what they
12 are, that we would have a problem with that. But trying to
13 draw some inference about what Mr. Berger's state of mind was
14 or asking him directly what his state of mind was is completely
15 irrelevant.

16 If they want to -- I mean, it will be clear that
17 Mr. Berger didn't come off a misrepresentation. But as an
18 example of a question they should not be allowed to ask, they
19 should not be allowed to ask Mr. Berger did you know that a
20 lawyer, even if he's not participating in a fraud, has to come
21 off of a representation that he believes that there is a fraud
22 afoot. If Mr. Collins knew that, that's fine. Mr. Collins can
23 testify that I knew that and so when I observed Mr. Berger
24 staying on the thing I had a perception. But asking Mr. Berger
25 that question is not relevant to anything other than trying to

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1 draw the inference that Mr. Berger thought there was no fraud,
2 which is irrelevant.

3 THE COURT: I guess I didn't think that's where
4 Mr. Bach was going and I didn't think he said -- I didn't think
5 he intimated he was going to ask him that question.

6 What it sounded like he was going to say -- and,
7 Mr. Bach, correct me if I am wrong -- I thought you were then
8 going to ask -- proposing to ask Mr. Berger whether or not the
9 subsequent just preclosing agreements in which BAWAG, among
10 other things, approved the transaction changed his opinion.
11 That's where I thought you were going.

12 Am I wrong on that?

13 MR. BACH: Well, I think that's the gist. I don't
14 know that I'll put it precisely that way. But I think that the
15 government intends to ask certain questions of Mr. Berger
16 beyond --

17 THE COURT: No kidding. Do you think?

18 MR. BACH: They are going to elicit that BAWAG came
19 off the representation. They're going to elicit a statement
20 from Mr. Berger that he felt the representation couldn't be
21 maintained without disclosure of the PPA --

22 MR. LEVY: We are not.

23 MR. BACH: And then they're going to -- they're not
24 going to elicit that BAWAG came off the representation?

25 MR. LEVY: We are. That fact was observable to

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1 Mr. Collins. What the reason for it was was not observable to
2 Mr. Collins so we are not going to ask that question.

3 MR. BACH: So they are going to imply, imply, that
4 Jason Berger became comfortable because his client was taken
5 off the representation. That's what they are going to suggest.

6 And we have to be able to show that there was an
7 entire course of conduct and an entire set of legal agreements
8 well beyond coming off the rep -- and the government has
9 admitted in its papers this these agreements extinguished the
10 rights and interests under the PPA, they wiped them out. And
11 then it is that set of agreements that we need to be able to
12 explore with Mr. Berger, put them in context, so the jury
13 understands what happened here.

14 It is classic, classic --

15 THE COURT: The difference -- I don't see how you are
16 precluded from bringing out the facts of these subsequent
17 agreements.

18 What I'm struggling with is the opinion question. If
19 nobody -- and I told you the other day, my sense is that no one
20 ought to be asked for his opinion as to whether or not the PPA
21 should or should not have been disclosed. There is sufficient
22 facts out here and the explanations certainly of Mr. Schoen
23 were sufficiently clear and simple that the jury can make up
24 its mind.

25 MR. BACH: Judge, from what I'm hearing, it sounds

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1 like we have a central concept here that we're all agreeable.
2 We've all agreed, more or less, and we will have to see how the
3 contours play out. It is very hard in the abstract to figure
4 out exactly how this is going to play. We haven't heard the
5 government's direct.

6 But I hear exactly what the Court is saying, that
7 there is a hesitation to ask, you know, what was your opinion
8 with respect to disclosure of the PPA. But aside from asking
9 that question in the jugular --

10 THE COURT: In the jugular?

11 MR. BACH: Yes.

12 -- both sides are entitled to elicit conduct, and
13 we'll have to see in the contours whether that conduct needs to
14 be explained --

15 THE COURT: When you are talking about Mr. Berger's
16 client cutting off the representations, are you again talking
17 about the subsequent agreements or are you talking about --

18 MR. BACH: No. They come off the representation in
19 the final deal contract with Thomas H. Lee.

20 THE COURT: Which representations?

21 MR. BACH: All of the representations. They are no
22 longer really an active party to that agreement at the time the
23 deal closes. They are merged into RGHI.

24 THE COURT: By what we've been talking about is the
25 subsequent agreements which are really preclosing agreements?

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1 MR. BACH: Right. So everything is being repped
2 through RGHI and BAWAG comes off the reps.

3 But apart from that, there are various other legal
4 agreements that are put into place between Mayer Brown and
5 McDermott, Will to address the PPA. And there are a number of
6 legal agreements and contracts that are designed essentially to
7 eliminate all of the rights and interests in the PPA. And I
8 believe that all of that is relevant here, because it goes to
9 the question of whether the PPA had any effect --

10 THE COURT: Who did those documents?

11 MR. BACH: Joe Collins and all the lawyers at
12 McDermott, Will and some of the Austrian lawyers representing
13 BAWAG.

14 THE COURT: And when you discuss those -- I mean, how
15 are you proposing -- you are proposing to discuss those with
16 Mr. Berger. So how do you propose to discuss them?

17 MR. BACH: It is hard to say in detail. I will need
18 to listen to the direct. But I'm mindful of what the Court
19 seems to be saying, that we shouldn't say did you think there
20 was a fraud; we shouldn't say did you think that the PPA had to
21 be disclosed. But there is going to be some play in the joints
22 about getting not just did this happen but why did this happen,
23 why are you taking this step, could you explain to the jury --
24 you know, classic kind of explanation of his perceptions at the
25 time to explain the course of conduct to the jury. We have to

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1 be able to --

2 THE COURT: What does that mean, "his perception"?

3 MR. BACH: His -- what he saw, what he did, what he
4 did with Mr. Collins. And I might need, depending on his
5 answers, for him to explain why he did this or why he did that,
6 what he thought it was addressing, and why the lawyers spent
7 time on this. That's kind of -- the jury can't understand
8 these very complex legal developments without some narration
9 beyond the documents themselves.

10 I'm not planning to go to the next plane and say, you
11 know, pose the big question, because, you know, the Court
12 doesn't want us to go there and the government doesn't want us
13 to go there. But I think we are going to have to see in the
14 course of this examination how clear it is or isn't without
15 some explanatory answers or questions so that we are able to
16 present the fact here. That's what we want to do.

17 THE COURT: OK. The facts are one thing, but the
18 question though and I think what has to be avoided is having
19 Mr. Berger make the jury's decision for him.

20 MR. BACH: Absolutely.

21 THE COURT: That is my great concern here.

22 MR. LEVY: Your Honor, look, I don't know exactly what
23 Mr. Bach is proposing to ask, but I'm troubled by what he's
24 suggesting. I think one of the documents, as an example, your
25 Honor, is that your Honor recalls that the EPMA contains a

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1 number of representations, and our position is that those
2 representations were false because the PPA was not disclosed.

3 One of the arguments they made at the last trial --
4 they will probably make at this one -- is that there is an
5 agreement called the Reversion Rights Agreement that was
6 executed just before the EPMA. Mr. Collins' position is that
7 extinguished the PPA so that they no longer needed to disclose
8 it and as a result the representations in the EPMA were not --

9 THE COURT: Operative.

10 MR. LEVY: -- false.

11 If he wants to ask Mr. Berger did you sign this
12 document, did you draft this document, was it done on X date,
13 does it have the following words, that's fine. We have been
14 asking our witnesses similar questions.

15 If he wants to say why did you do that, or did that
16 document extinguish the PPA, that is being offered not as some
17 sort of an explanatory -- here is what Jason's Berger's motive
18 was. His motive is of no consequence whatsoever. It is being
19 offered because they are hoping to get an answer that's helpful
20 for showing --

21 THE COURT: You can't ask -- we agree, you can't ask,
22 did it extinguish the PPA, right?

23 MR. BACH: Right. That's a legal opinion, anyway.

24 THE COURT: Yes, right.

25 What about the "why" question? What is his answer to

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1 why did you do it, Mr. Bach?

2 MR. BACH: I don't know that I will put it in
3 precisely those terms. But what I'm talking about, Judge, is
4 when Mr. Schoen was on the stand, they asked him questions like
5 what was the purpose. And they asked him questions that are
6 designed really to help the jury put in context what's
7 happening here. And --

8 THE COURT: I thought those questions really went
9 toward materiality.

10 MR. BACH: And they might well go to materiality here,
11 too, because certainly our argument is that what has happened
12 here, one of the effects of these legal -- this whole set of
13 legal transactions is to render the PPA material. I mean,
14 that's exactly what happened here, Judge. The concern was
15 raised, and all these lawyers together, the evidence is going
16 to be very clear at this trial, went to work and prepared all
17 of these agreements to zap the PPA of any material effect.

18 THE COURT: I don't think he can say that.

19 MR. BACH: I'm not asking him that. That's for
20 summation. That's for summation.

21 And I think rather than us trying to figure out what
22 the nuances are here and now, the Court should police the
23 examination, you know, in realtime.

24 I get what the Court is saying, and I --

25 THE COURT: What is the answer to why did you do it?

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1 If the answer is to zap the PPA, that can't be permitted;
2 right?

3 MR. SCHWARTZ: Your Honor, I normally don't like to do
4 tag team so I apologize.

5 THE COURT: Thank God.

6 MR. BACH: He is the one person I defer to, Judge.

7 MR. SCHWARTZ: You know, the view on lay testimony is
8 that if it is based on the witness' perception at the time and
9 that it explains to the jury what's going on and helps them
10 determine a fact in issue, then you can elicit lay testimony.

11 THE COURT: But it is always subject to 403.

12 MR. SCHWARTZ: That I can completely understand.

13 THE COURT: In this instance, my great fear is the
14 fear of unfair prejudice in allowing these lawyers to mouth off
15 and to essentially take over what the jury is supposed to
16 decide. That is my fear, and that is, in my view, the
17 weightiest concern here. There might be some marginal
18 relevance to saying that and, thus, some probative value, but
19 the possible unfair prejudice far outweighs that. And the
20 concepts we are talking about here are not so difficult in
21 terms of the distribution of the funds and the right to veto
22 the transaction.

23 You know, Mr. Schoen was pretty clear about why these
24 were important concepts to him. And the legal documents, with
25 the help of you wonderful lawyers, when you point out what they

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1 say, that allows you to make your argument.

2 My recollection from the last trial was there was
3 some -- a little bit of instruction to the jury about contract
4 interpretation, what you have to do with the whereas clause,
5 etc., etc., but it does not seem to me that these are such
6 surgeon-like problems, to take your analogy, Mr. Schwartz, that
7 the jury should suffer the danger of having its role usurped by
8 these experts.

9 MR. SCHWARTZ: Your Honor, I completely understand the
10 Court's rationale, as I think Mr. Bach does. Mr. Berger's --

11 THE COURT: I leave it to you to beat it into him,
12 Mr. Schwartz.

13 MR. SCHWARTZ: Mr. Berger is going to state, by
14 repeating his testimony, what his concerns are. The only thing
15 that we want to be able to elicit -- and we can certainly take
16 this up before we cross-examine him with the Court -- is how
17 the two sides dealt with concerns that he expressed to
18 Mr. Collins.

19 THE COURT: What does that mean?

20 MR. SCHWARTZ: It is as simple as that, that he took
21 steps to deal with the concerns that he expressed.

22 THE COURT: That who had expressed? That Schoen?

23 MR. SCHWARTZ: That Mr. Berger had expressed.

24 That's the only thing we're trying to do here, so the
25 jury understands that the subsequent steps that were taken deal

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1 with concerns that he expressed that they are going to elicit.
2 That's classic cross-examination. It is not going to go into a
3 legal opinion. We are not going to go close to that.

4 MR. BACH: And I'm assuming when they question they
5 are not going to say did you have a concern, because right
6 there that's projecting a state of mind to the jury, that
7 they're going to be -- I'm presuming they're going to be very
8 careful on their direct so that we're not in a position where
9 they got to do it and we didn't.

10 I think we should revisit all of this after the
11 direct, because it will be much clearer then about what the
12 state of the record is and all of this won't be so abstract.

13 MR. LEVY: Your Honor, just two quick points on this.

14 No point in hiding the ball on what we're going to do
15 with Mr. Berger on that period of time. We are going to say
16 what did you say to Mr. Collins in that meeting. We won't even
17 ask him whether he truly believed it, but just what did you
18 say. And then subsequently we'll ask him, essentially, did you
19 suggest in the course of negotiating the EPMA that BAWAG be
20 taken off of the representation. We will not ask him why, the
21 answer to why, which he gave at the last trial is because we
22 didn't think those representations were true and we didn't want
23 to make them. We are not going to ask him that question at
24 this trial.

25 It was observable to Mr. Collins that BAWAG was asking

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1 to come off the representations, and we will argue the
2 inference that he knew why. But Mr. Berger's unexpressed
3 reason for doing it is of no consequence, much as his
4 unexpressed reason for doing anything is of no consequence.
5 That is our position.

6 MR. BACH: Judge, that's --

7 MR. SCHWARTZ: That's not so.

8 MR. BACH: First of all, it is a misleading argument.
9 It is a misleading argument. Going off the reps does not
10 absolve lawyers of considering the basic question of whether
11 they can go forward with a deal and make money for their
12 clients if they believe something illegal is happening.
13 Lawyers can't do that. Going off the reps is neither here nor
14 there with respect to that question. And that's what Judge
15 Sand and Judge Patterson instructed the last jury.

16 It's a misleading argument that they want to make,
17 that BAWAG went off the reps and that should have been a
18 warning sign to Joe Collins, when these lawyers are every day
19 working hard, moving forward, and trying to make this deal
20 happen, without reservation. That's what they're doing.

21 THE COURT: I don't know what the latter part of that
22 means.

23 MR. BACH: What it means is is that if I know a crime
24 is afoot and I'm a lawyer, going off the reps doesn't allow me
25 to continue to work on the deal and push it forward for my

CAFDCOL1

Trial

1 client.

2 THE COURT: I understand that, but that's not the end
3 of the story, either.

4 MR. BACH: That's right. And they want to argue to
5 this jury that you can infer from going off the reps that BAWAG
6 lawyers were somehow distancing themselves.

7 THE COURT: I hear you. Hold that thought.

8 Mr. Reporter, we might ask you for that later on.

9 The jury is ready. May we bring them in?

10 Do you people need to go out?

11 MR. CHERNOFF: No, your Honor. We just wanted to make
12 the Court aware that the defense knows our witness who is doing
13 the read back, Investigator Goodman, took seriously ill over
14 the weekend.

15 THE COURT: Probably because you people wore him into
16 the ground.

17 MR. CHERNOFF: We probably did.

18 THE COURT: Who is doing it?

19 MR. CHERNOFF: So Inspector Clark will be subbing.

20 THE COURT: Come on up, sir.

21 OK. May we bring the jurors in?

22 (Continued on next page)

23 (Pause)

24 (Jury present)

25 THE COURT: Won't you be seated, ladies and gentlemen.

CAFDCOL1

Trial

1 We continue with the direct examination of Mr. Maggio.
2 Mr. Imperatore.

3 MR. IMPERATORE: Your Honor, the government calls
4 Inspector Robert Clark.

5 THE CLERK: Will you please stand and raise your right
6 hand.

7 ROBERT CLARK,
8 called as a witness by the government,
9 having been duly sworn, testified as follows:

10 THE CLERK: Please be seated.

11 State your full name and spell your last name slowly
12 for the record.

13 THE WITNESS: Robert Clark, C-l-a-r-k.

14 THE COURT: Ladies and gentlemen, Inspector Clark is
15 going to be reading Mr. Maggio's testimony in the same manner
16 that Mr. Goodman did last week.

17 Mr. Imperatore.

18 MR. IMPERATORE: Your Honor, would the Court elicit
19 Mr. Clark's -- the reason why Mr. Clark is on the stand versus
20 Mr. Goodman, or should I ask questions to bring that out?

21 THE COURT: I'm told, ladies and gentlemen, that poor
22 Mr. Goodman got ill. So we don't want him here spreading it
23 around, so Inspector Clark is stepping in for him.

24 Go ahead, sir.

25 DIRECT EXAMINATION

Cafdcoll

Clark - direct

1 BY MR. IMPERATORE:

2 Q. Good morning, Inspector Clark.

3 A. Good morning.

4 Q. Inspector Clark, where are you employed?

5 A. United States Postal Inspection Service.

6 Q. What is your title there?

7 A. United States Postal Inspector.

8 Q. How long have you been there?

9 A. Since May of 2012.

10 Q. Inspector Clark, I'm going to ask that we pick up at page
11 2348, line 5.

12 Just let me know when you are ready to begin.

13 A. I'm ready.

14 "Q Mr. Maggio, between 2000 and 2003, did Refco acquire any
15 companies?

16 "A Yes.

17 "Q What companies?

18 "A They acquired several companies, Lind-Waldock being
19 probably the largest, Main Street Trading, a few smaller firms,
20 some introducing brokers, Riefler Trading.

21 "Q Did you talk to Mr. Bennett about these acquisitions?

22 "A Yes.

23 "Q What did he say about these acquisitions from 2000 to 2003?

24 "A One, the biggest thing he told me, was that we needed to
25 buy revenues.

Cafdcoll

"Maggio - direct

1 "Q What does that mean, Mr. Maggio?

2 "A Well, we weren't doing -- we weren't making enough money,
3 and so Phil said we need to, you know, acquire firms so that we
4 can buy revenues to make the firm look better to sell.

5 "Q And, Mr. Maggio, if you were having money difficulties, how
6 could you buy the firms in the first place?

7 "A Basically what we did was we used customer funds to
8 purchase the company, and then we'd also look at the company to
9 see if they had any funds that we could -- that we could
10 utilize to help pay for their own purchase.

11 "Q Mr. Maggio, did you think that as a result of these
12 acquisitions Refco was in good financial shape?

13 "A No.

14 "Q Why not?

15 "A Well, they still had -- the nonrelated party receivable
16 from Refco Group Holdings was only getting bigger; wasn't
17 getting smaller, wasn't being paid down with revenues, just
18 getting bigger. So the problem itself was getting bigger. The
19 revenues that we were making weren't nearly enough to
20 substantiate the firm looking good for a potential acquirer."

21 THE COURT: A little more slowly, if you would,
22 Inspector.

23 THE WITNESS: Sorry.

24 THE COURT: Thank you.

25 THE WITNESS: (Reading)

Cafdcoll

"Maggio - direct

1 "A So we were padding the revenues. We were coming up with
2 false -- making false trades, charging false interest rates in
3 order to make the firm look better for a possible acquisition.
4 So the firm financially was in no better shape. In fact, the
5 firm was in worse shape because the hole was getting bigger.

6 "Q And, Mr. Maggio, from 2000 to 2003, did you talk to anyone
7 about the failings and the other schemes that you were engaged
8 in? Did you talk to Mr. Bennett and to Mr. Grant about them?

9 A. Oh, yes.

10 "Q What did you say to them and what did they say to you
11 during this period?

12 "A There was continuing stress at the time, trying to meet
13 settlement and trying to find enough counterparties to fail to.
14 And there was no end in sight. The hole was getting bigger.
15 Refco wasn't -- wasn't making enough money to bite, to earn its
16 way out of the hole. And so my -- I was seriously concerned
17 about the long-term or even the short-term survival of the
18 company. I spoke to Phil and I spoke to Tone, separate
19 conversations, and their plan was that they were going to sell
20 the firm; that somewhere along the line, that there would be
21 someone to come in if we -- if we do well, to buy the firm
22 lock, stock and barrel.

23 "Q And when you say if you do well, what do you mean by if you
24 do well?

25 "A We have a -- I'm sorry. Do well, meaning we showed enough

Cafdcoll

"Maggio - direct

1 revenues on the books.

2 "Q And if you showed enough revenue on the books, false
3 revenues, somebody would come buy the company and that would
4 bail you out?

5 "A That's correct.

6 "Q Now, Mr. Maggio, you mentioned before that a portion of
7 Refco had been sold to BAWAG in 1999. Do you recall that?

8 "A Yes.

9 "Q Between 1999 and 2004, were you aware if BAWAG acquired any
10 additional interest in Refco?

11 "A Not at the time.

12 "Q In that period 1999 to 2004, had you heard of something
13 called a Proceeds Participation Agreement?

14 "A The proceeds participation agreement? No.

15 "Q Did you know about a company called DF Capital?

16 "A No.

17 "Q Do you ever discuss those matters with Mr. Bennett?

18 "A No.

19 "Q Beginning in 2001, Mr. Maggio, did the amount of money owed
20 by RGHI to Refco still exist?

21 "A Yes.

22 "Q And in 2001, who at Refco told you how much debt from RGHI
23 to Refco had to be paid down through the round robins?

24 "A Rob Charleston.

25 "Q How did the process begin in 2001, the process of the round

Cafdcoll

"Maggio - direct

1 robins?

2 "A Sometime in -- sometime in early February or late January,
3 Rob -- Mr. Charleston would give us a -- give me a preliminary
4 figure, how much they needed to pay down, you know, for year
5 end. And he would give me that number, and then I would
6 proceed to line up the customers --

7 MR. IMPERATORE: I'm sorry, Inspector Clark, if I
8 could just stop you there?

9 There is an error in the transcript, your Honor?

10 THE COURT: Sir.

11 MR. IMPERATORE: "Charleston" should read "Trosten" on
12 page 2351. And I would ask -- I will just go back and we'll
13 begin the questions at line 10:

14 "Q And in 2001, who at Refco told you how much debt from RGHI
15 to Refco had to be paid down through the round robins?

16 "A Rob Trosten.

17 "Q How did the process begin in 2001, the process of the round
18 robins?

19 "A Sometime in -- sometime in early February or late January,
20 Rob -- Mr. Trosten would give us a -- give me a preliminary
21 figure, how much they needed to pay down, you know, for year
22 end. And he would give me that number, and then I would
23 proceed to line up the customers to transact those round robin
24 transactions that we saw before. Then also Mr. Trosten would
25 tell me, direct me where -- whose accounts to credit at what

Cafdcoll

"Maggio - direct

1 companies, because RGHI had accounts not only at Refco Capital
2 Corp. but they also had accounts at RCM. So he would give me
3 the number, and he would direct me how to credit those RGHI
4 accounts. And of course, when we unwound it, the reverse would
5 happen.

6 "Q And, Mr. Maggio, when it came to documented transactions,
7 who did Refco contact?

8 "A Mayer Brown.

9 "Q And who on behalf of Refco contacted Mayer Brown?

10 "A David Weaver.

11 "Q Mr. Maggio, just taking a look at Government Exhibits
12 2001.1(a) through 2001.1(f) and 2001.2(a) through 2001.2(f).

13 "A Yes, sir.

14 "Q What are those documents, Mr. Maggio?

15 "A Those represent loan documents for the round robin
16 transactions for fiscal year end 2001.

17 "Q Mr. Maggio, if you could just take a quick look at those
18 documents and tell us the customers that were involved and what
19 were the amounts of the loans involved in 2001?

20 "A CIM Ventures for 250 million and Delta Flyer for 200
21 million.

22 "Q So it's a total of 450 million, Mr. Maggio?

23 "A That was documented, yes.

24 "Q Over year end, is that right?

25 "A Over fiscal year end February 28, 2001.

Cafdcoll

"Maggio - direct

1 "Q And, Mr. Maggio, are there indemnities and guarantees
2 associated with these documents?

3 A. Yes.

4 "Q Incidentally, Mr. Maggio, do you know if Mr. Trosten signed
5 any documents in connection with the round robins this year?

6 "A I believe he did. I haven't gone through this, but I know
7 one year he did.

8 "Q Mr. Maggio, the year that he did, do you know the
9 circumstances surrounding why he signed the document?

10 "A No.

11 "Q You know, Mr. Maggio, do you know if Mr. Collins had any
12 direct contact with any of the customers in 2001?

13 "A Yes.

14 "Q Directing your attention to Government Exhibit 4003,
15 Mr. Maggio.

16 "Mr. Maggio, what's the date of this letter?

17 "A February 16, 2001.

18 "Q Is that right before a fiscal year end?

19 "A Yes.

20 "Q Who signed the letter?

21 "A Jim Ricketts.

22 "Q And who's he?

23 A. Jim is the treasurer of CIM Ventures and also the treasurer
24 of Ingram Micro."

25 And looking up towards the top, Mr. Smith.

Cafdcoll

"Maggio - direct

1 "And who is the letter directed to?

2 "A The letter is directed to Joe Collins.

3 "Q It starts, Per the arrangements made with Bob Monk.

4 "Who is Bob Monk?

5 "A Bob Monk is an attorney who works at Mayer Brown.

6 "Q Attached are the executed signature pages for the two loan
7 agreements and the signed promissory note for CIM Ventures,
8 Inc. transactions with Refco Capital Markets and Refco Group
9 Holdings, Inc.

10 "Do you see that?

11 "A Yes.

12 "Q And in the second paragraph it reads, It is planned that
13 Refco Capital Markets will deposit the loan proceeds in CIM's
14 account -- there's a number -- at RCM on February 23, 2001."

15 If you could just highlight that, please, Mr. Smith,
16 that paragraph.

17 "CIM will then fax the letter to RCM instructing them
18 to move funds to RGHI with a 15-basis point uplift in the
19 interest rate. RCM will then withdraw the funds from CIM's
20 account and deposit the funds to RGHI's account, thereby
21 completing the back to back loan transaction. The steps will
22 be reversed on March 6, 2001. RCM will transfer the CIM
23 spread.

24 "Is that the interest rate spread, Mr. Maggio?

25 "A Excuse me?

Cafdcoll

"Maggio - direct

1 "Q Is that the interest rate spread?

2 "A Yes. The 15 basis points is, yes, sir.

3 "Q On the transaction to CIM's Royal Bank of Canada account.

4 "Mr. Maggio, is that an accurate description of the
5 round robin that occurred with CIM Ventures in 2001?

6 "A Yes.

7 "Q Now, Mr. Maggio, do you know if Mr. Collins personally
8 reviewed the round robin documents in 2001?

9 "A Yes.

10 "Q Directing your attention to Government Exhibit 352."

11 The parties have stipulated that the handwriting on
12 this document is Mr. Collins'.

13 "Mr. Maggio, just looking up at the memorandum on the
14 front, it says, 'Mayer, Brown & Platt' on top. Do you see
15 that?

16 "A Yes."

17 Mr. Smith, if you would highlight that, please, in the
18 top left corner. Thank you.

19 "Q And what's the date?

20 "A February 21, 2001.

21 "Q You mentioned who Mr. Weaver is. Who is Nick Mascio?

22 "A Nick Mascio is a salesman who works for Peter McCartney on
23 the government desk at Refco Securities.

24 "Q And it's from Mr. Collins. Do you see that?

25 "A Yes.

Cafdcoll

"Maggio - direct

1 "Q And, Mr. Maggio, who is Delta Flyer?

2 "A Delta Flyer was a small fund managed by Eric Flanagan, so
3 it's a customer of Refco.

4 "Q And was Delta Flyer one of the customers involved in the
5 round robin in 2001?

6 A. Yes.

7 "Q And if you could just look at points five and six inserted,
8 do you see that?

9 "A Yes.

10 "Q And, again, this is the handwriting of Mr. Collins. It
11 says, Refco Group, Limited, LLC, guaranteed and RGL indemnity
12 letter. Do you see that?

13 "A Yes.

14 "Q Were guarantees and indemnities involved in the round
15 robins in 2001?

16 A. Yes.

17 "Q And, Mr. Maggio, if you could just take a look at the page
18 ending 5649. And do you see an edit that appears at the bottom
19 of the page?

20 "A Yes."

21 And Mr. Smith, if you could highlight that, please, at
22 the very bottom.

23 "Q What's the edit?

24 "A Crossed out Phil Bennett's name and put Rob Trosten's name,
25 and they crossed out Phil's title and they put the title in of

Cafdcoll

"Maggio - direct

1 Rob.

2 "Q Mr. Maggio, just quickly look at that document. There are
3 edits in other places in the document?

4 "A Yes.

5 "Q And, for example, Mr. Maggio, if you could just look at the
6 page ending at the bottom, 680.

7 "And, now, Mr. Maggio, did Mayer Brown draft all the
8 documents used in connection with the customer round robins in
9 2001?

10 "A Yes, sir.

11 (Continued on next page)

CAFPOL2

"Maggio" - direct

1 BY MR. IMPERATORE:

2 "Q. Directing your attention to Government Exhibit 1200C,
3 Mr. Maggio, what is this document?

4 "A. It's a bill for Mayer Brown to Refco.

5 "Q. What's the date of this Bill?

6 "A. March 19, 2001.

7 "Q. And is that after fiscal year-end 2001?

8 "A. Yes.

9 "Q. All right. Mr. Smith, if you could just highlight the
10 first paragraph.

11 This is for professional services rendered from
12 February 1st, 2001, through February 28th, 2001, in connection
13 with the following. Do you see that?

14 "A. Yes.

15 "Q. And if you could just turn to Page 8 of the document,
16 there's an entry for Refco Capital Markets; do you see that?

17 "A. Yes.

18 "Q. What does it say in the description for Refco Capital
19 Markets?

20 "A. Preparation and review of UCC filings and acknowledgments;
21 conferences regarding back-to-back CIM loans; preparation of
22 execution documents --

23 THE COURT: "Copies." I'm sorry. Forgive me. I was
24 reading off the bill.

25 "A. -- consultation regarding liberty loans and prior

CAFPCOL2

"Maggio" - direct

1 practices; preparation of Patriot loan documents; reviewing
2 closing documents regarding Okara and Dondero matter;
3 preparation and guarantee for the Patriot loans and preparation
4 of the Delta loan documents.

5 "Q. Mr. Maggio, was there a round-robin conducted with BAWAG in
6 2001 as well?

7 "A. Yes.

8 "Q. Mr. Maggio, please take a look at government
9 Exhibit 1750.01B. What is that, Mr. Maggio?

10 "A. This is a customer ledger activity report for RGHI on Refco
11 Capital Corp.'s books.

12 "Q. So this is an account that RGHI held at Refco Capital
13 Corporation, right?

14 "A. Yes.

15 "Q. And, Mr. Maggio, if you could just take a quick look at
16 Page 3 of the document. Mr. Maggio, taking a look at Page 3 of
17 this customer ledger report from Refco Group Holdings, Inc. do
18 you see an entry for 2-26-2001 or entries for 2-26-2001?

19 "A. Yes.

20 "Q. Do you see two wire transfers from First Union Bank?

21 "A. Yes.

22 "Q. What are the total amounts of those transfers?

23 "A. One was for 225 million and one was for 75 million.

24 "Q. And, Mr. Maggio, what did that represent?

25 "A. That represents the round-robin, the loan that BAWAG made

CAFPCOL2

"Maggio" - direct

1 to RGHI.

2 "Q. And so that amount was 300 million made on February 26th,
3 2001?

4 "A. Yes.

5 "Q. And was it reversed, the transaction, Mr. Maggio?

6 "A. Well, 225 million was part of the round-robin. 75 million
7 was not, and it was reversed, yes.

8 "Q. And, Mr. Maggio, turning to the year 2002. In 2002 were
9 there round-robins?

10 "A. Yes, sir.

11 "Q. And did you get the numbers for the amount of the pay-down
12 from Mr. Trosten?

13 "A. Yes.

14 "Q. And do you know if Mr. Weaver contacted Mayer Brown in
15 order to pull the documents together for the round-robin?

16 "A. Yes.

17 "Q. Mr. Maggio, take a look, if you would, at Government
18 Exhibit 4018. There are two e-mails here; is that right,
19 Mr. Maggio?

20 "A. Yes.

21 "Q. If you could just look down at the bottom half of the
22 e-mail.

23 And, Mr. Smith, if we could just get the signature as
24 well. Thank you.

25 This is from David Weaver. It's dated January 18th,

CAFPCOL2

"Maggio" - direct

1 2002. It's to Joseph Collins, and it's cc'd to you,
2 Mr. Maggio; is that right?

3 "A. Yes.

4 "Q. And if you could look at the second paragraph, it says, 'In
5 addition, I need to have new loan agreements drafted between
6 RCM' -- that's Refco Capital Markets, right?

7 "A. Yes.

8 "Q. -- 'and CIM, and CIM and RGHI.' Is RGHI, Refco Group
9 Holdings, Inc.?

10 "A. Yes.

11 "Q. 'the dates of the loans would be February 25th, 2002;
12 March 4th, 2002. RCM will then send \$250 million at a rate of
13 1.8 percent with a group guarantee, and CIM will lend RGHI \$250
14 million at a rate of 2.10 percent with a guarantee from RGL.'
15 Is that Refco Group, Limited?

16 "A. Yes.

17 "Q. 'Right of offset and indemnity letter.' Do you see that?

18 "A. Yes.

19 "Q. 'All these documents could be found in the files from last
20 year. I believe Bob Monk worked on that.'

21 Mr. Maggio, did that describe the round-robins that
22 were going to happen, in part, in 2002?

23 "A. Yes.

24 "Q. This document is forwarded on from Mr. Collins to Paul
25 Koury; do you see that?

CAFPCOL2

"Maggio" - direct

1 "A. Yes.

2 "Q. If we could just scroll up, please. And what does
3 Mr. Collins say to Mr. Koury?

4 "A. 'Paul, please proceed to prepare the necessary documents.'

5 "Q. If we could highlight that, please, Mr. Smith. Thank you.

6 And who is Paul Koury?

7 "A. Paul Koury is an attorney who works for Joe at Mayer Brown.

8 "Q. Mr. Maggio, if you could take a look at Government
9 Exhibit 4007. What is the letterhead on this document,
10 Mr. Maggio?

11 "A. Mayer Brown.

12 "Q. What is the date of the document, if you can tell?

13 "A. January --

14 "Q. I'm sorry. Do you see the fax line up there?

15 "A. January 28th.

16 "Q. And who is it from and who is it to?

17 "A. It is from Joe Collins to Paul Koury.

18 "Q. So this is a fax from Mr. Collins to Mr. Koury. Let's take
19 a look at the attached information, Mr. Maggio. If you could
20 turn to the next page. It's dated January 22nd, 2002, and if
21 we could blow up the text of this, please.

22 'Joe, per David Weaver's request, please find attached
23 the marked-up documents for the -- for next Refco back-to-back
24 loans to CIM. Please provide amended documents to David and me
25 as soon as possible.' Do you see that?

CAFPCOL2

"Maggio" - direct

1 "A. Yes.

2 "Q. Mr. Maggio, if you could just take a look at Government
3 Exhibit 4006, please?

4 "A. Excuse me, sir?

5 "Q. Government Exhibit 4006, Mr. Maggio?

6 "A. I have it, sir. Thank you.

7 "Q. Mr. Maggio, this appears to be a series of two e-mails; is
8 that right?

9 "A. Yes.

10 "Q. If we could just focus on the bottom e-mail. Who is this
11 e-mail from?

12 "A. Paul Koury.

13 "Q. And who is it to?

14 "A. Joe Collins.

15 "Q. What does it refer to?

16 "A. It refers to the draft of the CIM documents.

17 "Q. It says, 'Joe, attached please find drafts of the following
18 new loan documents.' Do you see that?

19 "A. Yes.

20 "Q. Are loan agreements involving Refco Capital Markets and
21 Refco Group Holdings and CIM included?

22 "A. Yes.

23 "Q. These are for proposed round-robins; is that right?

24 "A. Yes.

25 "Q. There are also drafts of a guarantee and indemnity from

CAFPCOL2

"Maggio" - direct

1 Refco Group, Limited, mentioned here?

2 "A. Yes.

3 "Q. This e-mail is forwarded on from Mr. Collins to Mr. Koury.
4 What does Mr. Collins say to Mr. Koury? If we could highlight
5 this, please?

6 "A. 'Paul, these documents are fine. Please try to have them
7 converted to Word format so that they are easier to transmit to
8 the client and others.'

9 "Q. Now, Mr. Maggio, we've been looking at documents for
10 round-robins proposed to CIM for 2002. Did CIM ultimately
11 participate in the round-robins in 2002?

12 "A. No.

13 "Q. What happened?

14 "A. I believe that CIM or Ingram Micro had severe reservations
15 about doing these transactions further with Refco.

16 THE COURT: Ladies and gentlemen, these statements
17 should not be considered by you for the truth of the statements
18 that these entities had reservations, but only for Mr. Maggio's
19 state of mind, and his and the other co-conspirators' reaction
20 to the statements. So you may not consider the statement for
21 the truth of the statement. Counsel.

22 "Q. Mr. Maggio, did you find other customers to participate
23 after CIM Ventures backed out?

24 "A. Yes.

25 "Q. Who contacted Mayer Brown to draft up the documents for the

CAFPCOL2

"Maggio" - direct

1 customers that were participating in 2002?

2 "A. David.

3 "Q. And did he contact Mayer Brown?

4 "A. Yes.

5 "Q. Drawing your attention to Government Exhibit 312.

6 Mr. Maggio, in 2002, who were the customers that
7 participated in the round-robin?

8 "A. Liberty Corner, Delta Flyer.

9 "Q. Mr. Maggio, what is the date of this document?

10 "A. February 12.

11 "Q. At the bottom, do you see it says 'Group guarantee and
12 right of offset'?

13 "A. Yes.

14 "Q. Did the round-robins in 2002 involving guarantees and right
15 of offset?

16 "A. Yes.

17 "Q. Mr. Maggio, if we can now just take a look at Government
18 Exhibit 4011. Mr. Maggio, this is dated February 13th, 2002;
19 do you see that?

20 "A. Yes.

21 "Q. What letterhead is this on?

22 "A. Excuse me?

23 "Q. What letterhead is this on?

24 "A. This is on Mayer Brown.

25 "Q. Who is this memorandum to?

CAFPCOL2

"Maggio" - direct

1 "A. It is to David Weaver.

2 "Q. Who is it from?

3 "A. From Joe Collins and Paul Koury.

4 "Q. It says, 'Regarding 2002 loan documents.'

5 Mr. Maggio, what does this e-mail reflect, or what
6 does this memo reflect?

7 "A. Basically, it is reflecting the documents that Mayer Brown
8 was sending to David for the loan agreements, for the Delta
9 Flyer and for the Liberty Corner transactions.

10 "Q. Mr. Maggio, turn the page. Was there another customer
11 involved in the transactions for 2002?

12 "A. Yes. Beckenham Trading.

13 "Q. It says 'BTC document'?

14 "A. Yes.

15 "Q. And what does that stand for?

16 "A. Beckenham Trading.

17 "Q. With regard to the three sets of round-robin documents that
18 are being conveyed by this memorandum, are there loan
19 agreements from Refco Capital Markets to the customer?

20 "A. Yes.

21 "Q. Are there loan agreements from the customer to RGHI that
22 are simultaneous in time?

23 "A. Yes.

24 "Q. All right. Are there guarantees and indemnities that take
25 customer risk away?

CAFPCOL2

"Maggio" - direct

1 "A. Yes.

2 "Q. With respect to each of these three sets of round-robin
3 documents, what is the fee that is being paid to the customer
4 for participation in the round-robin?

5 "A. Each is different. I believe it's 25 basis points.

6 "Q. It may be different, but it is a certain percentage of the
7 interest rate?

8 "A. Yes.

9 "Q. Mr. Maggio, if you would take a look at Government
10 Exhibit 2002.1A through F, 2002.2A through F and 2002.3A
11 through F.

12 "A. Yes, sir.

13 "Q. What are these documents?

14 "A. These documents reflect the loan documents, the round-robin
15 loan documents that we used for the three clients, Liberty
16 Corner, Beckenham Trading and, I believe, Delta Flyer.

17 "Q. Mr. Maggio, looking at those loan agreements, can you tell
18 us how much money was involved in each of these three
19 round-robin transactions?

20 "A. Well, for Beckenham Trading it was 125 million, for Delta
21 Flyer it is 175 million, and for Liberty Corner, it's 325
22 million. So that would be 625 million.

23 "Q. Now, Mr. Maggio, the round-robins in 2002 were 625 million,
24 the customer round-robins. Do you remember what they were back
25 in 2001?

CAFPCOL2

"Maggio" - direct

1 "A. Oh, was it 450 or 510? I don't recall, sir.

2 "Q. I think you said 450.

3 "A. Yes.

4 "Q. So that was an increase of \$175 million; is that right?

5 "A. For the document -- for the documented ones, yes.

6 "Q. Mr. Maggio, why is it that the size of the customer
7 round-robins was increasing?

8 "A. Because the hole was getting bigger. The interest income
9 alone, the interest expense at RGHI alone was significant
10 enough just to increase the hole. That doesn't count the phony
11 trades that might have put in the account that year to make the
12 hole bigger.

13 "Q. Again, Mr. Maggio, who drafted the loan documents for this
14 \$625 million -- I'm sorry.

15 Again, Mr. Maggio, who drafted the loan documents for
16 this \$625 million in loans?

17 "A. Mayer Brown.

18 "Q. Showing you Government Exhibit 1200E --

19 "A. Give me a second.

20 "Q. Mr. Maggio, is this a bill from Mayer Brown?

21 "A. Yes.

22 "Q. For what period of time?

23 "A. For March 2002 -- excuse me.

24 From February 1, 2002, through February 28, 2002.

25 "Q. And if you can just turn to Page 6 of this bill. What does

CAFPCOL2

"Maggio" - direct

1 the description for Refco Capital Markets read on Page 6?

2 "A. 'Preparation of loan, guaranty and indemnity agreements
3 between Refco, Delta Flyer, Liberty Corner and Beckenham
4 Trading; preparation of closing list index; reviewing closing
5 set; advice regarding handling of Beckenham changes and
6 revision of loan documents.'

7 "Q. Mr. Maggio, did Refco also engage in a BAWAG round-robin in
8 2002?

9 "A. Yes.

10 "Q. Do you recall how much that round-robin was valued at with
11 BAWAG?

12 "A. I believe it was 210 million.

13 "Q. Do you recall specifically?

14 "A. No, sir.

15 "Q. Mr. Maggio, directing your attention to Government
16 Exhibit 2025; do you see that?

17 "A. Yes, sir.

18 "Q. Does that refresh your recollection as to what the amount
19 was?

20 "A. Yes.

21 "Q. What was it?

22 "A. 210 million.

23 "Q. Mr. Maggio, this is an e-mail from you -- from Thomas
24 Hackl -- I'm sorry, from Carol Williams. Who is that?

25 "A. Carol Williams was my secretary.

CAFPCOL2

"Maggio" - direct

1 "Q. What was the date of this e-mail?

2 "A. February 21, 2002.

3 "Q. Who was it addressed to?

4 "A. It is addressed to Thomas Hackl.

5 "Q. And you were cc'd on this; is that right?

6 "A. Yes.

7 "Q. Is Ms. Williams sending this on your behalf?

8 "A. She sent it on behalf of me.

9 "Q. It says, 'Good morning, Thomas,' and it refers in the first
10 paragraph to a wire of \$300 million; do you see that?

11 "A. Yes.

12 "Q. What is that?

13 "A. That is the money that BAWAG was lending RGHI. It also
14 gives the instruction to where the money was coming from.

15 "Q. Mr. Maggio, were there round-robins again in 2003?

16 "A. Yes.

17 "Q. Directing your attention to Government Exhibit 4012 and
18 4013. Looking at Government Exhibit 4012, again, a series of
19 e-mails, and if you could just bring up the bottom portion.
20 This is an e-mail from Mr. Koury to you.

21 I'm sorry. Mr. Smith, if you would just highlight the
22 portion that goes up through the 'to' and 'from' fields.

23 This is an e-mail from Mr. Koury to you, Mr. Maggio;
24 is that right?

25 "A. Yes, and to David Weaver.

CAFPCOL2

"Maggio" - direct

1 "Q. What is being forwarded to you under the cover of this
2 e-mail from Mr. Koury?

3 "A. I'm sorry?

4 "Q. What is being forwarded to you under the cover of this
5 e-mail from Mr. Koury?

6 "A. The loan documents for Delta Flyer.

7 "Q. It says, 'DavidWeaver@GSSconsulting.org'; do you see that?

8 "A. Yes.

9 "Q. Why is Mr. Weaver receiving this e-mail at that address in
10 2003?

11 "A. David left the firm, and Rob Trosten hired him as a
12 consultant. Part of his responsibility, or what I gave him,
13 was to handle the loan documents for fiscal year end.

14 "Q. This e-mail is forward on to Mr. Collins; is that right?

15 "A. Yes.

16 "Q. If you could just scroll up, please. And is 4013
17 substantially similar set of e-mails, Mr. Maggio?

18 "A. Yes.

19 "Q. If we could turn to 4013, please.

20 What is the subject matter of that e-mail?

21 "A. Subject matter is the same as the forwarding of Liberty
22 Corner loan documents.

23 "Q. Okay. Mr. Maggio, directing your attention to Government
24 Exhibit 2003.1A through F, and 2003.2A through F. Do you
25 recognize these documents?

CAFPCOL2

"Maggio" - direct

1 "A. Yes.

2 "Q. What are they?

3 "A. They are loan documents for fiscal year end 2003.

4 "Q. Mr. Maggio, just looking at these two documents, what was
5 the value of the loans involved in the round-robin for 2003?

6 "A. 650 million.

7 "Q. Is that greater than the prior year?

8 "A. Yes.

9 "Q. Mr. Maggio, there are guarantees and indemnities associated
10 with these documents; is that right?

11 "A. Yes, sir.

12 "Q. I'm showing you Government Exhibit 1200F. Mr. Maggio, this
13 is another bill for services rendered for the period ending
14 February 28th, 2003.

15 Can you just take a look at Page 17, Mr. Maggio.
16 Mr. Maggio, whose name is up in the right-hand corner of this
17 bill?

18 "A. Joe Collins.

19 "Q. Do you know why Joe Collins' name is in the right-hand
20 corner of the bill?

21 "A. Because he was the lawyer in charge of Refco.

22 "Q. It says under Refco Capital Markets, the first entry is,
23 'Review of the loan agreements.'

24 Then, Mr. Maggio, later it says, 'Conferences
25 regarding preparation of loan with Liberty to \$500 million and

CAFPCOL2

"Maggio" - direct

1 loan with Delta for \$150 million'; do you see that?

2 "A. Yes.

3 "Q. Was there also a round-robin with respect to BAWAG in 2003?

4 "A. Yes, sir.

5 "Q. Was that for \$250 million, Mr. Maggio?

6 "A. Yes.

7 "Q. We can pull that down.

8 Mr. Maggio, the round-robins, did they occur again in
9 2004?

10 "A. Yes.

11 "Q. In prior years, Mr. Weaver initiated the contact; is that
12 right?

13 "A. Yes.

14 "Q. Who initiated contact in 2004?

15 "A. I did.

16 "Q. Why did you initiate contact in 2004?

17 "A. Because David no longer worked at Refco, and I couldn't
18 trust anybody else to go to Mayer Brown to draft documents.

19 "Q. Who did you contact?

20 "A. Paul.

21 "Q. Paul Koury?

22 "A. Yes.

23 "Q. Now, Mr. Maggio, why were you not comfortable going to
24 anybody else in your own firm to talk to Mayer Brown about
25 these documents?

CAFPCOL2

"Maggio" - direct

1 "A. Because I figured if they took a look at it, somebody in my
2 firm with anything up here would take a look at the documents
3 and realize that they were back-to-back loan documents with a
4 group guarantee to a company outside the consolidated group,
5 and they would have questioned it and could have raised
6 concerns to Dennis or someone else.

7 So I was concerned that somebody in my firm would blow
8 the whistle. So I decided to go directly to Mayer Brown, and I
9 knew that Mayer Brown knew the documents and wouldn't say
10 anything because they had done the documents before and because
11 I trusted them.

12 "Q. Mr. Maggio, you've indicated previously that you trusted
13 going to Mr. Collins, but here, you're contacting Mr. Koury.
14 Why did you feel comfortable talking to Mr. Koury about these
15 documents?

16 "A. Because Paul worked for Joe, and that if Paul went to Joe
17 and said, 'You know what, I feel uncomfortable,' I feel Joe
18 would just tell him to shut up.

19 "Q. Mr. Maggio, you mentioned during your testimony earlier
20 that Mr. Grant and Mr. Bennett referred to a plan to sell the
21 company; do you recall that?

22 "A. Yes.

23 "Q. What was the status of that plan in 2003?

24 "A. In 2003, the company decided to retain an investment banker
25 to see if there were any interested buyers in Refco.

CAFPCOL2

"Maggio" - direct

1 "Q. Who was the investment banker?

2 "A. Credit Suisse First Boston.

3 "Q. Did you discuss with Mr. Bennett why the services of Credit
4 Suisse First Boston were retained?

5 "A. Yes.

6 "Q. What did Mr. Bennett say?

7 "A. Prior to that, we had a company called Allen & Company,
8 which didn't do such a good job of promoting us.

9 Credit Suisse First Boston was the premiere investment
10 banker at the time, and he felt strongly that they would be
11 able to find somebody to buy all of Refco.

12 "Q. What was the purpose in trying to find someone to buy all
13 of Refco, according to Mr. Bennett?

14 "A. The purpose was if somebody bought all of Refco and paid
15 more than what the receivable was for RGHI, then they would be
16 able to sort of clear the decks, and there would be no more
17 receivable, and the firm would no longer be in debt.

18 "Q. Did you provide information to CSFB, Mr. Maggio?

19 "A. Yes.

20 "Q. Did you participate in the presentations?

21 "A. Yes.

22 "Q. Did you provide untruthful information?

23 "A. Yes.

24 "Q. Did you disclose the true size of the amount of money RGHI
25 owed to Refco?

CAFPCOL2

"Maggio" - direct

1 "A. No.

2 "Q. Why not?

3 "A. If CSFB saw what the true size of the hole was, then the
4 company would not be worth as much as the firm needed or Phil
5 and Tone and Tom needed -- or Phil and Tony, excuse me, to get
6 out of their debt.

7 "Q. When you say the debt, you mean the debt owed from RGHI to
8 Refco?

9 "A. Yes. Over a billion dollars.

10 "Q. Was a potential buyer found by Credit Suisse First Boston?

11 "A. Yes.

12 "Q. Who was that potential buyer?

13 "A. TH Lee.

14 "Q. Did you participate in presentations to TH Lee?

15 "A. Yes.

16 "Q. Did you tell the truth to TH Lee about the amount of size
17 of money owed to RGHI from Refco?

18 "A. No.

19 "Q. Did you tell the truth to Lee about the round-robin
20 transactions that Refco was engaged in annually at that time?

21 "A. No.

22 "Q. Did you lie about other things to Thomas H. Lee?

23 "A. Yes.

24 "Q. Now, did you express any concerns to Mr. Bennett about
25 Thomas H. Lee being a potential acquirer of the company?

CAFPCOL2

"Maggio" - direct

1 "A. Yes.

2 "Q. What concerns did you express to Mr. Bennett?

3 "A. Well, originally, the plan was to sell the firm to another
4 financial company such as a UBS or a JP Morgan, and they were
5 going to buy a hundred percent of the company, which would
6 completely wipe out the debt of RGHI.

7 However, with TH Lee, they are a private equity firm.
8 One was that they weren't buying a hundred percent of the
9 company; two was that the amount of money coming in wouldn't
10 nearly wipe out -- wouldn't wipe out the debt of RGHI; three,
11 TH Lee's modus operandi was to take the company as a private
12 equity company and to flip it, either to sell it to someone
13 else or to go IPO.

14 And in that situation, with them owning a percentage
15 of Refco, there would be a tremendous amount of pressure on us
16 to build up the revenues that they weren't making, and there
17 would be a lot of scrutiny, and I was very concerned about
18 that.

19 "Q. Mr. Maggio, you mentioned earlier round-robins. There were
20 round-robin transactions for fiscal year ended February 2004;
21 is that right?

22 "A. Yes.

23 "Q. What was the status of the Lee transaction in
24 February 2004? Had negotiations begun?

25 "A. Yes.

CAFPCOL2

"Maggio" - direct

1 "Q. Do you recall how much the round-robin for 2004 was?

2 "A. I believe it was 700-plus million. I don't really recall.

3 "Q. Does it refresh your recollection, Mr. Maggio, to hear
4 \$720 million?

5 "A. Yes.

6 "Q. Mr. Maggio, that round-robin in February 2004 of 720
7 million during the negotiations of the Lee transaction, who
8 documented that transaction?

9 "A. Mayer Brown.

10 "Q. Do you know who was representing Refco in connection with
11 the Lee transaction in February 2004?

12 "A. Yes.

13 "Q. Who?

14 "A. Joe Collins from Mayer Brown.

15 "Q. Was there also a round-robin of \$250 million with BAWAG in
16 February of 2004?

17 "A. Yes.

18 "Q. Mr. Maggio, did anything change with respect to the
19 frequency of the round-robins after 2004?

20 "A. Yes.

21 "Q. What happened? What changed?

22 "A. Instead of doing it once a year, every fiscal year end, we
23 were now doing it every quarter. Meaning, if you analyze that,
24 four times a year.

25 In addition to that, we also did one on the calendar

CAFPCOL2

"Maggio" - direct

1 year end, December of 2004. So the frequency was once every
2 three months with one added in for close of business
3 December 31st, 2004.

4 "Q. Mr. Maggio, at whose direction did the frequency of the
5 round-robins increase?

6 "A. Phil Bennett.

7 "Q. Did Mr. Bennett tell you why the frequency of the
8 round-robins had to increase?

9 "A. Yes.

10 "Q. What did he say?

11 "A. He said the increased scrutiny by the Lee people, and
12 because of our S-4 filing, which is the filing for the bonds.
13 That was the reason why we needed to do it on a quarterly
14 basis.

15 "Q. Mr. Maggio, there are a series of documents before you and
16 I'm going to list them.

17 Government Exhibit 2004.1A through F, Government
18 Exhibit 1200G, Government Exhibit 1750.04B, Government
19 Exhibit 2004.3A through F, Government Exhibit 2004.4A through
20 F, Government Exhibit 2004.5A through F, Government
21 Exhibit 2004.6A through F, Government Exhibit 2005.1A through
22 F, Government Exhibit 2005.1A2, Government Exhibit 2005.2A
23 through F, and Government Exhibit 2005.3A through F.

24 It's a large stack of documents, Mr. Maggio. Do those
25 documents include, among other things, the round-robin

CAFPCOL2

"Maggio" - direct

1 transactions or documents for the round-robin transactions that
2 happened beginning February 2004 and continuing afterwards?

3 "A. Yes, sir.

4 "Q. Now, Mr. Maggio, with regard to the May 2004 round-robin,
5 was that with Liberty Corner again?

6 "A. Yes, sir.

7 "Q. Was that round-robin for approximately \$700 million?

8 "A. I have to go get it.

9 "Q. 2004.1A -- or excuse me?

10 "A. That is February.

11 "Q. 2004.3A.

12 "A. 2004.3A?

13 "Q. Yes. I think it's up on the screen, Mr. Maggio.

14 "A. That would be easier for me. Thank you. Yes, sir.

15 "Q. Mr. Maggio, at the time of the May round-robin, what was
16 the status of the Lee transaction at that time?

17 "A. I believe, at that time, they had come to some sort of
18 agreement in principle.

19 "Q. Were negotiations ongoing?

20 "A. Yes.

21 "Q. Now, Mr. Maggio, I want to talk to you a little bit about
22 the Lee deal.

23 And we can take that down. Thank you.

24 What was your understanding as to the nature of the
25 Lee deal, Mr. Maggio?

CAFPCOL2

"Maggio" - direct

1 "A. That Lee was going to purchase, I think it was 53 or
2 57 percent of the company; that Phil Bennett was going to keep
3 his equity in the company; and that the firm was going to
4 borrow approximately a billion four, 800 million and 600
5 million.

6 "Q. Mr. Maggio, you mentioned before that you expressed concern
7 to Mr. Bennett about an acquirer that was only buying a portion
8 of the company. Did Mr. Bennett say anything in response to
9 that?

10 "A. Yes.

11 "Q. What did he say?

12 "A. He said, 'Sandy, the only way -- the only way we're going
13 to be able to get through this, it appears, is that we're going
14 to have to resell the company or we're going to have to go IPO.
15 And the Lee people will help us do it. They'll give us the
16 discipline to do it.'

17 "Q. When you say 'only way...to get through this,' what do you
18 mean?

19 "A. It means the RGHI debt, the huge hole that RGHI had at
20 Refco.

21 "Q. Mr. Maggio, did you talk to Mr. Bennett about conditions
22 that Thomas H. Lee Partners put on the deal?

23 "A. Yes.

24 "Q. What conditions did Lee put on the deal?

25 "A. The borrowing or the leveraging, so that we had to go out

CAFPCOL2

"Maggio" - direct

1 and borrow a billion four. Phil had to retain equity. The
2 board of managers re-signing all the managers; board of
3 directors meetings. Those were some of the restrictions.

4 "Q. Did Mr. Bennett tell you anything about restrictions
5 regarding Mr. Grant and Mr. Dittmer?

6 "A. Yes.

7 "Q. What did Mr. Bennett tell you?

8 "A. He told me that Thomas Lee did not want to have any other
9 partners other than Phil, and that they would have to buy out
10 the remaining shareholders.

11 "Q. Did Mr. Bennett talk to you about how discussions with
12 Mr. Grant and Mr. Dittmer's representatives were going?

13 "A. Yes.

14 "Q. What did he say?

15 "A. Phil was very upset and disturbed about the fact that he
16 wasn't getting any cooperation. And he told me that Tone and
17 Tom were being totally unrealistic as it relates to the true
18 value of this company because of the huge hole, and that the
19 company was just a piece of garbage and that he needs to get
20 them on board.

21 "Q. Did he say this in approximately April or May of 2004?

22 "A. Yes.

23 "Q. Did he tell you what he was going to do to remind them, if
24 anything, about the true financial condition of the company?

25 "A. Well, he was going to meet with them. He was going to meet

CAFPCOL2

"Maggio" - direct

1 with Tom or his representative, and he was meeting with Tone
2 Grant. And he was going to give them the lay of the land, so
3 to speak.

4 "Q. Now, Mr. Maggio, do you remember an issue arising about
5 \$500 million in excess cash being a requirement of the Lee
6 deal?

7 "A. I vaguely remember it. Yes, sir.

8 "Q. Mr. Maggio, did your company have \$500 million in excess
9 cash in 2004?

10 "A. No, sir. We had no excess cash.

11 "Q. Now, Mr. Maggio, did there come a time during negotiations
12 with the Lee team or the Lee firm when Mr. Bennett came to you
13 with a problem regarding allegations of losses being hidden in
14 an offshore account?

15 "A. Yes.

16 "Q. What did Mr. Bennett say to you?

17 "A. Phil told me that someone sent a letter to the TH Lee
18 people saying that Refco was hiding losses, previous losses
19 offshore somewhere, and that Phil was very upset that somebody
20 sent the letter.

21 We tried to figure out who it was. We couldn't. He
22 said he was going to -- This was early in the morning. He was
23 running up to the Lee people to talk to them.

24 "Q. Did you understand that this was concerning an offshore
25 entity in London?

CAFPCOL2

"Maggio" - direct

1 "A. Yes. I believe ROL, Refco Overseas, Limited.

2 "Q. Now, Mr. Maggio, did you talk to Mr. Bennett after this
3 meeting?

4 "A. Yes.

5 "Q. What did he say after this meeting?

6 "A. 'I took care of it.' He told them -- he told me he told
7 them that it was nothing more than a disgruntled employee, and
8 he was going to -- you know, they bought it.

9 "Q. Mr. Maggio, you mentioned before that part of the Lee
10 transaction involved debt being provided by banks. Do you
11 recall that?

12 "A. Yes.

13 "Q. Please take a look at Government Exhibit 1008. Mr. Maggio,
14 do you see that document?

15 "A. Yes.

16 "Q. What is it?

17 "A. It is a senior security credit facility that we presented
18 for the TH Lee deal.

19 "Q. Mr. Maggio, did you participate in writing information for
20 that document?

21 "A. Yes.

22 "Q. Did you participate in the meeting that related to that
23 document?

24 "A. Yes.

25 "Q. Did you lie in both that document and in meetings?

CAFPCOL2

"Maggio" - direct

1 "A. Excuse me, sir?

2 "Q. Did you lie in both that document and in the meetings?

3 "A. Yes, sir.

4 "Q. Was Mr. Collins present at the bank meeting?

5 "A. Excuse me?

6 "Q. Was Mr. Collins present at that bank meeting?

7 "A. I don't recall.

8 "Q. Mr. Maggio, were you also involved in preparation of
9 information relating to the offering of notes?

10 "A. Yes, sir.

11 "Q. Just take a quick look at Government Exhibit 5008. Do you
12 recognize that document, Mr. Maggio?

13 "A. Yes.

14 "Q. What is it?

15 "A. It's the offering circular for the 600 million senior
16 subordinated notes.

17 "Q. Did you provide inaccurate information for purposes of
18 compiling that document?

19 "A. Accurate? No.

20 "Q. Inaccurate?

21 "A. Yes, sir.

22 "Q. Mr. Maggio, please take a look at Government Exhibit 1411.
23 Mr. Maggio, do you recognize that document?

24 "A. Yes, sir.

25 "Q. What is it?

CAFPCOL2

"Maggio" - direct

1 "A. It is the offering memorandum for the senior security
2 credit notes.

3 "Q. Mr. Maggio, what was the purpose of this document?

4 "A. This was part of the leveraged buyout for the Lee deal.

5 "Q. Mr. Maggio, does this document contain lies?

6 "A. Yes.

7 "Q. Did you provide untruthful information for the purposes of
8 compiling this document?

9 "A. Yes.

10 "Q. Mr. Maggio, in connection with the leveraged buyout, were
11 you also asked to fill out something called a director's and
12 officer's questionnaire?

13 "A. Yes.

14 "Q. What is that?

15 "A. It is a questionnaire for regulatory purposes for when you
16 file an S-4.

17 "Q. And if you could take a look at Government Exhibit 2115,
18 please?

19 "A. Yes.

20 "Q. Do you have it, Mr. Maggio?

21 "A. Yes, sir.

22 "Q. What is that?

23 "A. That is the D and O questionnaire.

24 "Q. Mr. Maggio, did you sign this document?

25 "A. Yes, sir.

CAFPCOL2

"Maggio" - direct

1 "Q. Does it contain untruthful information?

2 "A. Yes, sir.

3 "Q. Does it contain untruthful information about your
4 involvement in something called a profits participation plan?

5 "A. Yes, sir.

6 "Q. Why is the information concerning the profits participation
7 plan untrue?

8 "A. It --

9 "Q. I direct your attention to Page 5, Mr. Maggio. There is a
10 section there for annual compensation. Do you see that?

11 "A. Yes, sir.

12 "Q. Is that accurate or inaccurate?

13 "A. Inaccurate.

14 "Q. How is it inaccurate?

15 "A. Because it doesn't show the -- what is called the profits
16 participation that we had, which is basically above and beyond
17 the compensation that was received.

18 "Q. Do you know what the purpose of that profits participation
19 plan was, Mr. Maggio?

20 "A. Yes.

21 "Q. What was it?

22 "A. To disguise the true expenses of the firm. Profits
23 participation was treated almost like a dividend. If you made
24 compensation, it will be treated as expense. Therefore, it
25 artificially increases the net revenues of the company.

CAFPCOL2

"Maggio" - direct

1 "Q. Mr. Maggio, did you disclose in this document the 7 million
2 loan forgiveness from 2002?

3 "A. No.

4 "Q. Did you expect to get additional payments at the conclusion
5 of the leveraged buyout transaction?

6 "A. Yes.

7 "Q. Did you disclose that in this document?

8 "A. No.

9 "Q. Looking at Page 20 -- if we could just blow that up,
10 please -- it says, 'General Information. Are you aware of any
11 material facts concerning the business and the operations of
12 the company which is not disclosed in the offering circular
13 provided to you or which you believe may be inaccurately stated
14 therein?' Do you see that?

15 "A. Yes, sir.

16 "Q. You checked 'no'; do you see that?

17 "A. Yes, sir.

18 "Q. Mr. Maggio, was that truthful?

19 "A. No, I did not disclose the RGHI loan.

20 "Q. Mr. Maggio, you talked about ratings agency presentations
21 in the context of the credit facility earlier. Did you also
22 participate in presentations to rating agencies in connection
23 with the leveraged buyout?

24 "A. Yes, sir.

25 "Q. Did you lie in that capacity or in that connection?

CAFPCOL2

"Maggio" - direct

1 "A. Excuse me?

2 "Q. Did you lie in that connection?

3 "A. Yes, sir.

4 "Q. Showing you Government Exhibit 2123, Mr. Maggio, do you
5 recognize that document?

6 "A. Yes, sir.

7 "Q. Mr. Maggio, what is the date of this letter?

8 "A. June 18, 2004.

9 "Q. Who was it to?

10 "A. It is to me.

11 "Q. What is the subject?

12 "A. The subject is the redemption of the profits participation
13 interest.

14 "Q. Just looking at the second paragraph, I guess, the last
15 sentence, it says, 'Consistent with the valuations associated
16 with the proposed transaction, the consideration due you in
17 respect of the redemption is a total of \$8,379,590.' Do you
18 see that?

19 "A. Yes, sir.

20 "Q. What are the numbers that appear below that?

21 And if we could scroll down, please.

22 Is that a breakdown of that amount?

23 "A. Yes, sir.

24 "Q. Mr. Maggio, did you disclose this information in your D and
25 O questionnaire?

CAFPCOL2

"Maggio" - direct

1 "A. No.

2 "Q. Was that wrong?

3 "A. Yes.

4 "Q. The leveraged buyout, was it completed?

5 "A. Yes, sir.

6 "Q. Did you receive a large payment in connection with that
7 leveraged buyout being completed?

8 "A. Yes.

9 "Q. Was it approximately \$5.7 million?

10 "A. Yes, sir.

11 "Q. Now, after the leveraged buyout, Mr. Maggio, did Refco
12 Group Holdings, Inc. still owe money to Refco?

13 "A. Yes.

14 "Q. What happened at the end of August 2004 with respect to the
15 related-party receivable that was owed by RGHI to Refco?

16 "A. It was decreased somewhat, but --

17 "Q. At whose direction?

18 "A. At Phil's.

19 "Q. Was it through a round-robin transaction again?

20 "A. Yes.

21 "Q. Was Liberty Corner a customer?

22 "A. Yes.

23 "Q. Was it for \$485 million?

24 "A. Yes.

25 "Q. Mr. Maggio, this was after the Lee transaction closed; is

CAFPCOL2

"Maggio" - direct

1 that correct?

2 "A. Yes. This was over quarter end August 31st, 2004, after
3 the Lee transaction.

4 "Q. Why did Refco have to engage in a round-robin transaction
5 after the close of the Lee transaction?

6 "A. Because it still had a huge hole, even after the
7 transaction. The Lee transaction was not going to totally
8 eliminate the debt.

9 "Q. Now, Mr. Maggio, was there another round-robin in November
10 of 2004?

11 "A. I believe there was.

12 "Q. Was that by Liberty Corner again?

13 "A. Yes.

14 "Q. Was that in the amount of \$545 million?

15 "A. Yes, sir.

16 "Q. How did that come about?

17 "A. Excuse me?

18 "Q. How did that come about?

19 "A. I was directed by Phil to do another round-robin.

20 "Q. Mr. Maggio, was there a round-robin in December 2004? You
21 mentioned before that there was -- that there was for the
22 calendar year ended December 2004?

23 "A. Yes.

24 "Q. Was the customer for that also Liberty Corner?

25 "A. Yes.

CAFPCOL2

"Maggio" - direct

1 "Q. Was that for \$550 million?

2 "A. Yes, sir.

3 "Q. Mr. Maggio, previously you testified that Mayer Brown had
4 documented round-robin transactions. Did Mayer Brown or did
5 you document the December 2004 round-robin transaction?

6 "A. Excuse me?

7 "Q. Did you or Mayer Brown document the December 2004
8 round-robin transaction?

9 "A. I don't recall the December 2004.

10 "Q. Mr. Maggio, why was a round-robin done in December 2004?

11 "A. Phil said that they were contemplating going on a calendar
12 year end. They were contemplating the fiscal year end to go on
13 calendar year end.

14 "Q. So why did the round-robin have to happen?

15 "A. Because if they were going to change their fiscal year end,
16 he wanted to make certain that the RGHI loan was not shown at
17 that time.

18 "Q. By December of 2004, after the Lee transaction had closed,
19 was there new management in the company?

20 "A. Excuse me? In December?

21 "Q. Yes.

22 "A. Yes. We had a board of directors.

23 "Q. What was the status of Mr. Trosten at that time?

24 "A. In December?

25 "Q. Yes.

CAFPCOL2

"Maggio" - direct

1 "A. He left the firm.

2 "Q. He had left previously?

3 "A. He left previously and Refco hired a new CFO, a Gerry
4 Sherer.

5 "Q. You mentioned, Mr. Maggio, that there was a new board of
6 managers. Who was on this new board of managers?

7 "A. The board of managers were the existing managers, myself,
8 Mr. Sherer, Mr. Klejna, Mr. Murphy and Mr. Sexton. And we
9 reported to the board of directors -- excuse me, as well as
10 Mr. Bennett.

11 "Q. Mr. Maggio, if you could take a look at Government
12 Exhibit 2120. Do you recognize that, Mr. Maggio?

13 "A. Yes.

14 "Q. What is it?

15 "A. This is the January presentation at the board of managers,
16 made to the board of directors.

17 "Q. Did you help compile that document?

18 "A. Yes.

19 "Q. Did it contain false and inaccurate information?

20 "A. Yes.

21 "Q. Why?

22 "A. We had to phony up the revenues. One, we doctored the
23 amount of volume. We also changed the amount of revenues by
24 doing transactions that were illegal.

25 "Q. Mr. Maggio, you said that Mr. Bennett was on the board; is

CAFPCOL2

"Maggio" - direct

1 that right?

2 "A. He was on the board of managers. I don't know if he was on
3 the board of directors.

4 "Q. Who were you trying to lie to in compiling the information
5 for this presentation?

6 "A. The board of directors.

7 "Q. Which people on that board particularly?

8 "A. The Lee people, Mr. Schoen, and Mr. Jaeckel.

9 "Q. Now, Mr. Maggio, was there another round-robin transaction
10 again in fiscal year end 2005?

11 "A. Yes.

12 "Q. That was with Liberty Corner?

13 "A. Yes.

14 "Q. Was that for over \$300 million?

15 "A. 335 million.

16 "Q. Mr. Maggio, in connection with the round-robin in February
17 of 2005, was Mr. Weaver still with Refco, the firm?

18 "A. No.

19 "Q. So who reached out to have the round-robin documented for
20 February 2005?

21 "A. I did.

22 "Q. Who did you contact?

23 "A. Paul Koury.

24 "Q. Were you successful in getting in touch with Mr. Koury?

25 "A. At first, I wasn't.

CAFPCOL2

"Maggio" - direct

1 "Q. If we could please bring up for Mr. Maggio, Government
2 Exhibit 4015.

3 Mr. Maggio, do you recognize that document?

4 "A. Yes.

5 "Q. Mr. Maggio, this is a chain of e-mails. If we can take a
6 look at the bottom e-mail, it says -- and if we could scroll
7 down, please. I'm sorry. Thank you.

8 It says, 'From: Joseph P. Collins; dated:
9 February 23rd, 2005. Please call Sandy Maggio.'

10 Do you see that?

11 "A. Yes.

12 "Q. You said initially, Mr. Maggio, that you reached out to
13 Paul Koury but were unsuccessful in reaching him; is that
14 right?

15 "A. Yes.

16 "Q. What did you do after you were unsuccessful in reaching
17 Mr. Koury?

18 "A. I talked to Joe Collins, and I told Joe that I needed a set
19 of documents for fiscal year end, but I can't get ahold of
20 Paul. And Joe said, 'I will get him. Don't worry.'

21 "Q. Then Mr. Koury responds. It says, 'Paul Koury,
22 February 23rd, 2005,' and it's directed to Mr. Collins. And it
23 says, 'I just spoke to Sandy. He needs me to draft a side
24 letter agreement to the loan agreements between Refco and
25 Liberty that I just drafted and got executed. He wants me to

CAFPCOL2

"Maggio" - direct

1 revise the amount from \$335 to 345 million.'

2 Do you see that?

3 "A. Yes.

4 "Q. Mr. Maggio, why did you need to increase the amount of the
5 round-robin from 335 million to 345 million in February of
6 2005?

7 "A. There were two reasons. Rob Trosten wasn't around; so the
8 information that was being put together was put together by
9 Phil, and he was wrong.

10 The second reason was that we needed to increase the
11 revenues for fiscal year end. And so in order to increase the
12 revenues for fiscal year end, we charged RGHI, increasing their
13 receivable, creating income for Refco Group. So the receivable
14 went from 335 to 345.

15 "Q. Mr. Maggio, this is in February of 2005. Was there again a
16 round-robin in May 2005?

17 "A. I believe so, yes.

18 "Q. Showing you Government Exhibit 2152; do you recognize that?

19 "A. Yes.

20 "Q. What is it?

21 "A. It is an e-mail from Paul saying that attached is the
22 amended documents for the round-robin transaction for
23 February 2005. I'm sorry, sir, I read that wrong. It is for
24 May 2005, not February.

25 "Q. Mr. Maggio, there's two e-mails here, right?

CAFPCOL2

"Maggio" - direct

1 "A. That is correct.

2 "Q. The bottom e-mail is from Mr. Koury to himself, regarding
3 the February 2004 round-robin; is that right?

4 "A. That is correct.

5 "Q. And the amendment made thereto; is that right?

6 "A. Correct.

7 "Q. Now, the follow-up e-mail -- and if we could just scroll
8 up, please -- it is from you to Mr. Koury saying, 'Give me a
9 call.'

10 If we could just highlight that, please.

11 Do you see that?

12 "A. Yes. The reason --

13 "Q. Go ahead.

14 "A. The reason why it was showing February is because I took an
15 old e-mail, so I didn't have to look up his e-mail address, and
16 I just spotted it and replied, using that as opposed to typing
17 in his entire e-mail address.

18 "Q. Were you asking Mr. Koury to call you because you wanted
19 Mayer Brown to prepare the round-robin documents for May 2005?

20 "A. Yes.

21 "Q. Could you take a look at Government Exhibit 2156, please.
22 Do you recognize that?

23 "A. Yes. Yes, sir.

24 "Q. What is it?

25 "A. 2156 is the e-mail from Paul to me saying that please find

CAFPCOL2

"Maggio" - direct

1 the attached documents in connection with the Liberty Corner
2 loans, 450 million for both dated May 25th, 2005, and maturing
3 on June 5th, 2005.

4 "Q. Mr. Maggio, this is an e-mail from Mr. Koury to you; is
5 that right?

6 "A. Yes.

7 "Q. What is being forwarded on here?

8 "A. The round-robin documents for May of 2005.

9 "Q. The date of this e-mail is May 20th, 2005; is that right?

10 "A. Right.

11 "Q. And who is cc'd on this document?

12 "A. Joe Collins, Ross Pazzol and Peter Schultz.

13 "Q. If we could highlight that, please.

14 Mr. Maggio, were round-robin documents ultimately
15 executed for May 2005?

16 "A. Yes.

17 "Q. Did they have guarantees and indemnities associated with
18 them?

19 "A. Yes.

20 "Q. Was there also a round-robin concerning BAWAG at this time?

21 "A. Yes.

22 "Q. Now, Mr. Maggio, if you would look at Government
23 Exhibit 2027. Do you recognize that?

24 "A. Yes.

25 "Q. What is it?

CAFPCOL2

"Maggio" - direct

1 "A. This is a promissory note on a short-term loan that BAWAG
2 gave to Refco Group Holdings over fiscal year end, beginning on
3 and maturing on March 8th, 2005, for 250 million.

4 "Q. So, Mr. Maggio, what is this round-robin for? This is for
5 fiscal year end 2005; is that right?

6 "A. Yes, February 28, 2005.

7 "Q. Why is there any documentation associated with this
8 round-robin for BAWAG when previously you testified there
9 weren't?

10 "A. Prior to this, BAWAG was a shareholder at Refco. They
11 didn't require documentation. Now they were no longer a
12 shareholder of Refco, and they wanted a promissory note.

13 "Q. Thank you, Mr. Smith. You can take that down now.

14 Mr. Maggio, you spoke earlier about acquisitions made
15 by Refco before the LBO; do you recall that?

16 "A. Yes.

17 "Q. Were acquisitions made by the company after the LBO?

18 "A. Yes.

19 "Q. Do you recall the acquisition of a company called Cargill?

20 "A. Yes.

21 "Q. What was that?

22 "A. Cargill was a large commodities firm located, based in
23 Chicago.

24 "Q. And what was the status of the cash flow problem that Refco
25 had historically in 2005?

CAFPCOL2

"Maggio" - direct

1 "A. Well, they were still using customer funds to fund the
2 company. Although there was significant cash coming in, the
3 firm was still very concerned about customer funds. We were no
4 longer failing, but we were still using customer monies to fund
5 the day-to-day operations. That was true in 2004 and 2005.

6 "Q. Mr. Maggio, how was Refco able to acquire Cargill if it had
7 a cash flow problem like you have described?

8 "A. Two reasons. We used the present customer funds that we
9 had to acquire. We also, when we did our calculation about the
10 amount of capital and purchase price of Cargill, we took a look
11 and saw all the accounts that they had and noticed that they
12 had hundreds of millions of dollars in cash for customers that
13 were unregulated; so we were allowed to tap into that.

14 So the simultaneous transaction, what it did was we
15 were able to purchase the company on one day and acquire the
16 customer funds on the same day we purchased it. Thereby, the
17 company was bought with their own customer funds.

18 "Q. Did you use, in part, the customer monies that Refco had or
19 had access to?

20 "A. Part of it, yes.

21 "Q. Now, Mr. Maggio, in February of 2005, did you see
22 Mr. Collins outside of work?

23 "A. I believe I did, yes.

24 "Q. Where did you see him outside of work?

25 "A. I saw him at a charity event in Manhattan for Chai

CAFPCOL2

"Maggio" - direct

1 Lifeline.

2 "Q. And showing you Government Exhibit 2155, Chai Lifeline
3 Awards Dinner, February 8th, 2005. Do you see that?

4 "A. Yes, sir.

5 "Q. You saw Mr. Collins at that event; is that right?

6 "A. Yes.

7 "Q. Why were you at that event?

8 "A. I was being honored for an award, an achievement award.

9 "Q. Mr. Maggio, why was Mr. Collins at that event?

10 A. They bought a table. Mayer Brown bought a table as part of
11 that affair.

12 "Q. Mr. Smith, if we can take that down. Thank you.

13 Mr. Maggio, you mentioned something called an S-4
14 registration statement. Did you do any work in connection with
15 the S-4 registration statement for Refco?

16 "A. Yes, sir.

17 "Q. Again, just basically, what was the purpose of the S-4
18 registration statement?

19 "A. The S-4 registration statement is a statement that you must
20 file with Securities and Exchange Commission to borrow money,
21 and this was related to the leveraged buyout and Lee.

22 "Q. Showing you Government Exhibit 5007, what is this,
23 Mr. Maggio?

24 "A. This is the offering statement for the -- This is the S-4
25 filing for the bonds that we were selling due to the Lee deal.

CAFPCOL2

"Maggio" - direct

1 "Q. Did this relate to the conversion of the privately offered
2 notes into publicly registered ones?

3 "A. Yes.

4 "Q. Did you contribute financial information to this document?

5 "A. Yes, sir.

6 "Q. Was it false?

7 "A. Yes, sir.

8 "Q. Now, Mr. Maggio, did Refco ultimately move towards an
9 initial public offering of Refco stock?

10 "A. Yes.

11 "Q. Was that something that both you and Mr. Bennett wanted to
12 do?

13 "A. I wasn't necessarily crazy about it, but Mr. Bennett
14 definitely wanted to do it.

15 "Q. What did Mr. Bennett say about why he wanted to do it?

16 "A. Because this was the only way we'd be able to get out of
17 the hole. If we sold stock, then he would have publicly traded
18 stock, and someday he would be able to sell his stock and,
19 hopefully, we could get out of the hole.

20 "Q. Why were you not crazy about the idea?

21 "A. Because that would incur even more scrutiny as it relates
22 to now the SEC looking at us, and other regulators.

23 "Q. Mr. Maggio, if you would take a look at Government
24 Exhibit 2116. Did you have to fill out another questionnaire
25 in connection with the IPO?

CAFPCOL2

"Maggio" - direct

1 "A. Yes. I think it was for the filing of an S-5, maybe, but
2 it is a filing for an IPO. You need to fill other, another D
3 and O.

4 "Q. Do you mean the S-1, Mr. Maggio?

5 "A. S-1, I apologize.

6 "Q. Mr. Maggio, what is 2116?

7 "A. Excuse me?

8 "Q. What is Government Exhibit 2116 before you?

9 "A. That is the D and O questionnaire.

10 "Q. In connection with the IPO; is that right?

11 "A. Yes, sir.

12 "Q. Did it contain similar lies to the ones that were in the
13 leveraged buyout questionnaire?

14 "A. Yes.

15 "Q. Mr. Maggio, you talked before about this profits
16 participation interest that you were owed; do you remember
17 that?

18 "A. Yes.

19 "Q. Did you find out, at some point, that other people were
20 getting more money out of the profits participation plan than
21 you were?

22 "A. Yes.

23 "Q. What did you do?

24 "A. Joe Murphy, who was my equal on the futures side, was
25 getting a larger piece in the profits participation plan.

CAFPCOL2

"Maggio" - direct

1 I went to Phil -- this was coordinating with what was
2 going on with Sedona at the time, with the investigation -- and
3 I told him I wanted to be made at least equal to what Joe was,
4 and he agreed.

5 "Q. Showing you Government Exhibit 2124, do you recognize that?

6 "A. Yes.

7 "Q. What is it?

8 "A. That is the letter that Phil sent me regarding my increase
9 in the profits participation plan.

10 "Q. Mr. Maggio, the date of this is July 25th, 2005. Do you
11 see that?

12 "A. Yes.

13 "Q. And the subject is, Redemption of Profits Partnership
14 Interest. Do you see that?

15 "A. Yes.

16 "Q. Mr. Maggio, it says, 'Further to our letter to you dated
17 June 18th, 2004, in which we gave notice of our intention to
18 acquire your profits participation interest, we are writing to
19 confirm modifications of the terms of that repurchase
20 arrangement. Specifically:

21 '1. The aggregate amount payable to you with respect
22 to that interest will be increased to 13.6 million,
23 approximately.'

24 Do you see that?

25 "A. Yes."

CAFPCOL2

"Maggio" - direct

1 MR. IMPERATORE: Mr. Smith, you can take that down,
2 please.

3 May I have a moment, your Honor?

4 THE COURT: Yes, sir.

5 MR. IMPERATORE: Your Honor, we have about 11 or 12
6 pages left on direct. Would this be a convenient time for the
7 Court to break or should we continue?

8 THE COURT: Is there any reason not to finish the
9 direct?

10 MR. IMPERATORE: I see no reason not to, your Honor.

11 THE COURT: All right. Is that all right with you,
12 ladies and gentlemen? And we'll take a break then. Thank you.
13 Yes, sir.

14 BY MR. IMPERATORE:

15 "Q. Did you receive any additional money at the completion of
16 the IPO?

17 "A. Yes.

18 "Q. Was that approximately \$9 million?

19 "A. Excuse me?

20 "Q. How much was it, approximately?

21 "A. I don't recall, sir.

22 "Q. Was it a few million dollars, Mr. Maggio?

23 "A. Yes.

24 "Q. Now, Mr. Maggio, you mentioned an S-1 registration
25 statement for the initial public offering. Do you recall that?

CAFPCOL2

"Maggio" - direct

1 "A. Yes.

2 "Q. Did you contribute information to that?

3 "A. Yes.

4 "Q. Did you contribute untruthful information to that S-1
5 registration statement?

6 "A. Yes.

7 "Q. Just quickly, showing you Government Exhibit 5009, what is
8 this, Mr. Maggio?

9 "A. This is the offering memorandum of the common stock
10 offering of Refco.

11 "Q. Mr. Maggio, you said that you contributed untruthful
12 information. Was that financial information?

13 "A. Yes.

14 "Q. And if we could please bring up Page 102 of this document.

15 Now, Mr. Maggio, do you see your biography there,
16 about a third of the way down the page?

17 "A. Yes.

18 "Q. It says, 'Santo Maggio has served as executive vice
19 president of Refco Group and president.'

20 And it continues at the very end, it says, 'Mr. Maggio
21 holds an accounting degree from Hunter College, City University
22 of New York.' Do you see that?

23 "A. Yes, sir.

24 "Q. Was that true?

25 "A. No. I brought it to the attention of the people who put

CAFPCOL2

"Maggio" - direct

1 this together and told them I was very upset, and all along, I
2 gave them what my true bio was.

3 "Q. Did this inaccurate biography appear in other documents?
4 Did you find that out also?

5 "A. Yes.

6 "Q. Mr. Maggio, was the IPO actually happening? Did the
7 initial public offering occur?

8 "A. Yes.

9 "Q. After the initial public offering occurred, was there still
10 a related-party debt owed from RGHI to Refco?

11 "A. Yes.

12 "Q. So on August 2005, what happened, Mr. Maggio?

13 "A. We did another round-robin transaction.

14 "Q. And was that round-robin transaction with Liberty Corner?

15 "A. Yes.

16 "Q. That was for \$420 million?

17 "A. Yes.

18 "Q. Who did the documentation for this round-robin in August of
19 2005?

20 "A. I did.

21 "Q. Why did you do it?

22 "A. It was easier for me to do the documentation myself, as
23 opposed to trying to track someone down at Mayer Brown. And I
24 just did it.

25 "Q. Now, Mr. Maggio, you mentioned earlier during your

CAFPCOL2

"Maggio" - direct

1 testimony about Refco's efforts to manipulate income and pad
2 revenue. Do you remember that?

3 "A. Yes, sir.

4 "Q. Did revenue padding continue?

5 "A. Yes.

6 "Q. How did it continue in late 2005?

7 "A. Two ways. One was journal entries. One was because Refco
8 Group Holdings had such a large debt that they owed interest
9 on, we increased the interest rate to 36 percent.

10 "Q. Mr. Maggio, drawing your attention to August and
11 September 2005, did you start getting questions from anyone
12 inside Refco at that time?

13 "A. Yes.

14 "Q. Who did you start receiving questions from?

15 "A. Peter James. He was the new controller of Refco Capital
16 Markets.

17 "Q. When was Mr. James' hired by Refco?

18 "A. Summer of 2005.

19 "Q. Had he been informed about the fraud that had been
20 occurring at Refco?

21 "A. No.

22 "Q. So when he started asking questions, what kinds of
23 questions did he start asking you?

24 "A. The first question was on -- I believe, on the receivable
25 by RGHI and the short-term loan we made to Liberty Corner.

CAFPCOL2

"Maggio" - direct

1 And then the next set of questions was about the
2 extremely high interest rate that RGHI was paying on their
3 loan.

4 "Q. Did Mr. James uncover or find the existence of the
5 receivable?

6 "A. Yes.

7 "Q. And did he confront you about that?

8 "A. Yes.

9 "Q. When he confronted you about it, what did you do?

10 "A. Basically, I told him it was none of his business, but then
11 I went to talk to Phil.

12 "Q. What happened next?

13 "A. What happened next was that Phil said he was going to talk
14 to Gerry and everything would be straightened out.

15 "Q. Who is Gerry?

16 "A. Gerry Sherer. I'm sorry. Who was now the CFO.

17 "Q. When was Mr. Sherer hired? It was after the leverage
18 buyout transaction?

19 "A. He was hired in January of 2005, after the IPO.

20 "Q. Had he been included in the loop on the fraud?

21 "A. No.

22 "Q. Mr. Maggio, let me draw your attention to the week of
23 October 3rd, 2005. What happened early on in that week?

24 "A. Dennis Klejna came to my office and told me that there was
25 a major problem, and that Gerry Sherer had uncovered something

CAFPCOL2

"Maggio" - direct

1 and was going to call an emergency meeting for the board.

2 "Q. I'm sorry, what was the name? Who told you this?

3 "A. Mr. Dennis Klejna, who was general counsel of Refco.

4 "Q. Mr. Maggio, when this happened, where was Mr. Bennett?

5 "A. Mr. Bennett was in Asia on a business trip.

6 "Q. What did you do after Mr. Klejna came to you?

7 "A. I desperately tried to reach Phil. U.S. cell phones do not
8 work in Japan. So I finally found him through one of the Refco
9 employees in Tokyo, and I was able to reach him.

10 "Q. What did you say Mr. Bennett when you reached him?

11 "A. I told Gerry that -- I told him that Gerry was going to go
12 in front of the board, and he said something to the effect
13 that, 'Oh, he was going to wait until I came back before we did
14 this, so we can discuss this. All right. They're going to
15 find out what's going on. I'm going to go to jail.'

16 "Q. And what did you say to him?

17 "A. I told them that -- to get a grip and to -- the first thing
18 he must do is call Scott Schoen, and that it's better that he
19 hear about this situation from you as opposed to a third party;
20 Scott Schoen being one of the representatives from Lee who was
21 on the board of directors.

22 And then Phil said, yes, he was going to do that. And
23 then he said I need to do something about the debt.

24 (Continued on next page)

Cafdc013

"Maggio - direct

1 "Q And when he said 'the debt,' which debt was that?

2 "A The debt was the debt that RGHI had on the books at Refco.
3 And I -- he said, well, maybe BAWAG could lend me the money.

4 "I said, would you want me to call Thomas Hackl and
5 see if he can structure something?

6 "And he said, yes, why don't you do that. In the
7 meantime, I'll start making my way back to New York.

8 "Q And, again, this is the debt than RGHI owed to Refco, is
9 that right?

10 "A Yes.

11 "Q And did you have a conversation with Mr. Hackl?

12 "A Yes, I did. I spoke to Mr. Hackl. I told him that Phil --
13 there was a disclosure issue on our filings. Phil needs to
14 borrow approximately \$400 million on what is now considered, if
15 you take all the stock that he owned, a billion dollars worth
16 of stock that was worth -- that's what the stock was selling
17 for, the worth of all the stock selling for on the New York
18 Stock Exchange.

19 "Thomas said, Well, we've had worse issues. I'll talk
20 to -- I'll talk to BAWAG and I'll get back to you.

21 "Q And, Mr. Maggio, what was the purpose of this money that
22 you were going to try and get from BAWAG? What was it going to
23 be used for?

24 "A It was going to be used to pay off the Refco Group
25 Holdings' loan at Refco Group, Limited.

Cafdc013

"Maggio - direct

1 "Q Did Mr. Hackl get back to you?

2 "A Yes, he did. He got back to me, told me that there
3 shouldn't be any problem; that someone is going to contact him,
4 meaning Phil Bennett, I think his name was Mr. Sari, and so the
5 process of him getting a loan was in the works.

6 "Q Drawing your attention to Wednesday, October 5th. What
7 happened that evening?

8 "A Mr. Bennett finally arrived from New York -- I mean, from
9 Tokyo, and I met him at the Marriott Hotel right by the World
10 Financial Center, World Trade Center, early evening in the bar.
11 And we had a drink and we just discussed the issue.

12 "Q And what was Mr. Bennett's demeanor at this time?

13 "A Mr. Bennett was -- you know, I've rarely seen him like
14 this. He seemed to be distraught. He seemed to -- he was very
15 concerned about his meeting with the Board of Directors. He
16 was very concerned about his family and what is his wife going
17 to say.

18 "And I told him, I said, listen, I can't do it. You
19 have to be strong. You have to go there. You have to come up
20 with a plan. And that's the way we left it.

21 "Q What happened the next day, Thursday?

22 "A Phil had the meeting with the Board of Directors. And he
23 came back, passed by my office, and he said, well, Sandy, you
24 bet the wrong horse.

25 "And I spoke to Dennis Klejna that afternoon, and I

Cafdc013

"Maggio - direct

1 told him that I would like to speak to the Board of Directors
2 myself. I told Dennis that I would try to do everything
3 possible in my power so that they could not disclose the
4 exactly -- the fraud that was going on. And I said, I want to
5 speak to the board.

6 "Q And did you talk to the board on Friday morning, the next
7 day?

8 "A Yes. Early next morning I spoke to the Board of Directors,
9 and I told them in a nutshell certain aspects of the fraud that
10 was going on, the RGHI loan, the receivable. I told them that
11 if they removed Phil Bennett, that the firm was going to go
12 bankrupt; that it would be -- there's too many people, too many
13 banks, too many customers who trust Phil. And the moment that
14 he's gone, the firm will -- all the customers will withdraw
15 their money. The banks will cut their credit lines. The
16 clearing course would go ahead and put further restrictions on
17 him. And the bank -- the firm will be bankrupt, bankrupt by
18 the end of the week.

19 "Q And so what did you propose to the board?

20 "A I proposed that what they should do is to keep Phil and to
21 make me the scapegoat, that there were too many people at the
22 firm that depended on him. And where were these people going
23 to get jobs, like Carol, who worked for me, or Karen, who
24 worked for Phil, secretaries? And I said, please, make me a
25 scapegoat. I don't care, all right, but you got to save Phil

Cafdc013

"Maggio - direct

1 because that's the only way to save this firm.

2 "Q Now, Mr. Maggio, you said that you told the board about the
3 balance that was owed from RGHI to Refco. Were you entirely
4 truthful during this meeting?

5 "A No.

6 "Q Did you tell them about the interest rate or did you lie
7 about the interest rate?

8 "A Yes.

9 "Q Did you disclose the --

10 "A I didn't lie. I just didn't tell them.

11 "Q You failed to tell them about the interest rate?

12 "A Yes, sir.

13 "Q And did you disclose generally the revenue padding that you
14 had participated in?

15 "A Yes.

16 "Q Now, Mr. Maggio, what happened on Friday, October 7th?
17 What happened after this meeting, Mr. Maggio, with the board?

18 "A What happened with the board?

19 "Q What happened after your meeting with the board?

20 "A I went back to the office. I asked Dennis Klejna whether
21 or not I needed to take some personal articles out of the
22 office, because I was assuming at that point that they were
23 going to -- that they were going to terminate me. He said he
24 couldn't get permission to do that.

25 "I left the office. I went to -- I went to visit an

Cafdc013

"Maggio - direct

1 attorney, and I think that evening I got notice that I was
2 temporarily put on a leave of absence.

3 "Q And, Mr. Maggio, over the course of your testimony the past
4 few days, you mentioned that you lied to a number of
5 individuals and entities during your time at Refco, is that
6 right?

7 "A Yes.

8 "Q Now, have you testified about every lie you've ever told?

9 "A No.

10 "Q And is that because you were only answering the questions I
11 asked you?

12 "A Yes.

13 "Q Mr. Maggio, what did Refco do on October 10, 2005?

14 "A Refco I think made a press release or announcement about
15 the 400-some-odd million-dollar receivable. They had announced
16 the suspension of myself and also Phil Bennett.

17 "Q And, Mr. Maggio, where were you on Monday, October 10,
18 2005, when this announcement was made?

19 "A I was in the -- I was at the U.S. Attorney's Office at St.
20 Andrew's Plaza.

21 "Q And, Mr. Maggio, did you lie on that day?

22 "A No.

23 "Q No further questions."

24 THE COURT: OK. Ladies and gentlemen, we've concluded
25 the direct examination of Mr. Maggio, so this might be a nice

Cafdc013

"Maggio - direct

1 time to have a break.

2 Would you follow the normal instructions. Leave any
3 exhibits here. Take your books with you. Please do not
4 discuss the case.

5 I look forward to seeing you in a few minutes.

6 Good morning.

7 THE CLERK: All rise.

8 (Continued on next page)

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Cafdc013

"Maggio - direct

1 (Jury not present)

2 THE COURT: Anything else on the record, friends?

3 MR. SCHWARTZ: Your Honor.

4 THE COURT: Sir.

5 MR. SCHWARTZ: Before we begin to read, I'm going to
6 offer the exhibits we offered through him.

7 In addition, I want to offer Defense Exhibit 2, which
8 was offered through another witness before he testified but was
9 shown to him. It was offered through Mr. Trosten.

10 THE COURT: OK. Anybody care?

11 MR. CHERNOFF: That's fine with us.

12 (Counsel conferred)

13 MR. SCHWARTZ: Your Honor, I have for the Court the
14 redacted version.

15 THE COURT: Thank you. Of?

16 MR. SCHWARTZ: Of what's coming up.

17 THE COURT: Cool. How long do we think the
18 testimony -- off the record.

19 (Discussion off the record)

20 (Recess)

21 (Jury not present)

22 THE COURT: Won't you be seated, friends.

23 May we bring the jurors in, please?

24 Off the record.

25 (Discussion off the record)

Cafdc013

"Maggio - direct

1 THE CLERK: Jurors entering.

2 (Jury present)

3 THE COURT: Thank you. Won't you be seated.

4 Mr. Imperatore.

5 MR. IMPERATORE: Your Honor, the government at this
6 time offers all the government exhibits covered by Mr. Maggio's
7 testimony.

8 THE COURT: Thank you. You will give the court
9 reporter a list, right?

10 MR. IMPERATORE: Yes, your Honor.

11 THE COURT: Thank you.

12 Cross-examination, Mr. Schwartz.

13 MR. SCHWARTZ: Your Honor, before we begin, the
14 defense offers Defense Exhibit 2, Defense Exhibit 713 and
15 Defense Exhibit 737.

16 THE COURT: Received.

17 (Defendant's Exhibits 2, 713 and 737 received in
18 evidence)

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SCHWARTZ:

22 Q. Good morning, Inspector Clark.

23 A. Good morning.

24 Q. I see you have been able to maintain your health during the
25 reading of the direct.

Cafdc013

Clark - cross

1 A. Yes, sir.

2 Q. Shall we read some cross?

3 A. I don't have anything in front of me.

4 THE COURT: Here you go. Here is one for you. You
5 can have mine.

6 THE WITNESS: Thank you.

7 (Pause)

8 MR. SCHWARTZ: (Reading)

9 "Q Mr. Maggio, in 2002 you testified before a jury, correct?

10 "A Yes.

11 "Q At a trial here in New York?

12 "A Yes.

13 "Q About Refco?

14 "A Yes.

15 "Q You took an oath to tell the truth as a witness?

16 "A Yes.

17 "Q And you looked at the jury and you proceeded to lie under
18 that oath, correct?

19 "A Yes.

20 "Q You lied not only to the jury but to the judge who was
21 presiding over the case?

22 "A Yes.

23 "Q You lied to the lawyer who was asking you questions, right?

24 "A Yes.

25 "Q And not just one lie, sir, more than one lie, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q And Joe Collins was not representing you in that matter,
3 right?

4 "A No.

5 "Q And no one caught you lying in that proceeding, sir,
6 correct?

7 "A Correct.

8 "Q You were never asked to withdraw your testimony or charged
9 with perjury, right?

10 "A Correct.

11 "Q So you lied to another jury in 2004, correct?

12 "A Yes.

13 "Q And that again was here in New York, right?

14 "A Yes.

15 "Q You took the oath again?

16 "A Yes.

17 "Q You swore to tell the truth?

18 "A Yes.

19 "Q And you violated it?

20 "A Yes.

21 "Q Different jury, but you lied to them again; you told lies
22 again, right?

23 "A Yes.

24 "Q Mr. Collins was not representing you, had nothing to do
25 with that case, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q And you also lied under oath in something called
3 depositions, right, sir?

4 "A Yes.

5 "Q And depositions are proceedings outside of a courtroom but
6 they're still under the supervision of a court, right?

7 "A Yes.

8 "Q And you've lied in at least several depositions without
9 Mr. Collins being your counsel, correct?

10 "A That's not true.

11 "Q That's not true? You've told the truth in those
12 depositions?

13 "A No. Excuse me. I misunderstood the question. Could you
14 repeat that question?

15 "Q Sure. You've lied in at least several depositions without
16 Mr. Collins being your counsel?

17 "A And also in a deposition with Mr. Collins as my counsel.

18 "Q Answer my question, sir.

19 "Several depositions that had nothing to do with Joe
20 Collins, you lied, correct?

21 "A Yes.

22 "Q Took an oath for those depositions?

23 "A Yes.

24 "Q A court reporter taking down your testimony?

25 "A Yes.

Cafdc013

"Maggio - cross

1 "Q And you proceeded to say things that weren't true, right?

2 "A Yes.

3 "Q You did that, sir, with a number of different lawyers
4 representing you, right?

5 "A Yes.

6 "Q You mentioned Mr. Weinberg, but you've lied under oath with
7 other attorneys, correct?

8 "A Yes.

9 "Q And you've lied under oath many times, right?

10 "A Yes.

11 "Q More times than you can put a number on, sir, correct?

12 "A Yes.

13 "Q You lied in a deposition concerning Genira, right?

14 "A Yes.

15 "Q One concerning Trade Winds, right?

16 "A Yes.

17 "Q And one concerning Carlin Equities, right?

18 "A Yes.

19 "Q And in none of those was Joe Collins involved?

20 "A Yes.

21 "Q And in those proceedings, Mr. Maggio, you lied on your own
22 initiative, right?

23 "A Yes.

24 "Q You didn't have a lawyer whispering in your ear and telling
25 you how to lie, correct?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q You lied, in fact, without telling your lawyers that you
3 were lying, right?

4 "A Yes.

5 "Q They had preparation sessions with you before you
6 testified, right?

7 "A Yes.

8 "Q Asked you the same questions on the same topics that you
9 were about to be examined about under oath, right?

10 "A Yes.

11 "Q And in those preparation sessions you looked at them
12 face-to-face and did not tell them the truth, right?

13 "A Yes.

14 "Q And just to be clear, sir, you were lying independently of
15 any lawyer's advice in those proceedings, correct?

16 "A The proceedings without Mr. Collins?

17 "Q Yes.

18 "A Yes.

19 "Q You were lying all by yourself, right?

20 "A Yes.

21 "Q You've testified that in 1993 back at the CFTC you went to
22 Joe Collins so that he could teach you how to lie, right?

23 "A I didn't say that.

24 "Q Well, you said, I went to Joe, I was concerned, I was
25 petrified, had these issues. I said, Joe, here are the issues.

Cafdc013

"Maggio - cross

1 Tell me what to do. And you said he proceeded to tell you how
2 to misdirect, I think was your word, how to misdirect the
3 regulators, right? Wasn't that your testimony?

4 "A Yes.

5 "Q But, sir, you were perfectly capable of lying on your own
6 without a lawyer's advice, correct?

7 "A Yes.

8 "Q You're perfectly capable of lying to regulators like the
9 CFTC on your own without a lawyer's advice, correct?

10 "A At that time, no.

11 "Q At that time, no, because at that time you were an innocent
12 waiting to be initiated into the world of lies; is that why?

13 "A That was the first time that I was in a situation like
14 that, the previous depositions, and the previous depositions I
15 was not in that position.

16 "Q Let me understand: Before you even set foot in Refco,
17 before you even met Mr. Bennett, you worked for a company
18 called Inland Consulting, right?

19 "A Yes.

20 "Q You committed bribes there, right?

21 "A Yes.

22 "Q Money laundering, right?

23 "A Yes.

24 "Q Tax evasion?

25 "A Yes.

Cafdc013

"Maggio - cross

1 "Q You arranged the books so it would look like the checks you
2 were writing on the bribes were legitimate, right?

3 "A Yes.

4 "Q You were able to do all that before you met Mr. Collins,
5 right?

6 "A Yes.

7 "Q And before your CFTC proceeding, you helped execute a plan
8 to siphon out \$25 million of customer money, right?

9 "A Yes.

10 "Q That was supposed to be in a safe place, right?

11 "A Yes.

12 "Q That's what the customers were told, right?

13 "A Yes.

14 "Q You created false documents to perpetuate that fraud,
15 right?

16 "A Yes.

17 "Q You took steps to hide what you were doing from regulators,
18 like the CME, when they asked for the documents, right?

19 "A Yes.

20 "Q And you're telling us that when you walked into Joe
21 Collins' office, or when you met with him in 1993, at that
22 point you needed advice from him on how to lie?

23 "A Yes.

24 "Q Because you couldn't tell a fib or cheat on your own; is
25 that your testimony, sir?

Cafdc013

"Maggio - cross

1 "A Sir, that was the first time I was being deposed in a
2 situation like that. I was told to trust him, and I did.

3 "Q And, sir, you have lied perfectly well in many other
4 proceedings without a lawyer giving you any tips, right?

5 "A Yes.

6 "Q Perfectly well in many other proceedings without Joe
7 Collins teaching you how to lie, right?

8 "A Yes.

9 "Q You consider yourself a good liar, don't you?

10 "A I'm sorry. I didn't hear you, sir.

11 "Q You consider yourself a good liar?

12 "A Yes.

13 "Q You lied on a regular basis as part of your day-to-day work
14 for Refco?

15 "A Yes.

16 "Q That's what you got paid for at Refco, right?

17 "A Yes.

18 "Q To tell lies, right?

19 "A Yes.

20 "Q That's why you got the stay-put bonus, right?

21 "A Yes.

22 "Q Mr. Bennett wanted you to stay put so you could lie for
23 him, right?

24 "A Yes.

25 "Q You lied to auditors, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q Joe Collins didn't need to teach you how to lie to
3 auditors, did he?

4 "A No.

5 "Q You lied to auditors repeatedly, right?

6 "A Yes.

7 "Q And that's because you needed them to bless financial
8 statements, right?

9 "A Yes.

10 "Q You needed them to give credibility to Refco's financial
11 statements to the outside world, right?

12 "A Yes.

13 "Q You hid the truth from them, right?

14 "A Yes.

15 "Q And that was so that you could use them in representing
16 Refco to the outside world, right?

17 "A Yes.

18 "Q You also lied to rating agencies, right?

19 "A Yes.

20 "Q You needed them to rate Refco for outside investors, right?

21 "A Yes.

22 "Q You never told them about the hole, right?

23 "A Hole? Meaning the RGHI receivable?

24 "Q Let's talk about the hole. 'Hole' is a word that you've
25 used, sir, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q You've used it throughout your testimony, right?

3 "A Yes.

4 "Q RGHI, the parent company, had a big debt that it owed to
5 Refco Group, Limited, right?

6 "A Yes.

7 "Q That was a debt that kept growing, right?

8 "A Yes.

9 "Q Sometimes called intercompany debt or shareholder loans,
10 right?

11 "A Related party debt.

12 "Q Related party debt. And the hole is that large portion of
13 it that was not disclosed, correct?

14 "A Yes.

15 "Q That's how you used the term, right, sir?

16 "A Yes.

17 "Q You didn't tell these rating agencies about the hole?

18 "A No.

19 "Q And you lied repeatedly to investment banks as well,
20 correct?

21 "A Yes.

22 "Q CSFB, you describe as the premier investment bank, right?

23 "A One of the premier investment bankers, yes.

24 "Q You were able to lie to them successfully, right?

25 "A Yes.

Cafdc013

"Maggio - cross

1 "Q And, again, you needed that bank to add credibility to
2 Refco in dealings with the outside world, right?

3 "A Yes.

4 "Q These were all outside professional firms and institutions,
5 right?

6 "A Yes.

7 "Q Not employed directly by Refco, right?

8 "A Yes.

9 "Q They have their own buildings and offices outside of Refco?

10 "A Yes.

11 "Q And they have to go through you, sir, and others at Refco
12 to get the information they need to do their work and present
13 Refco?

14 "A Yes.

15 "Q You and others at Refco decide what information to give
16 them and what information not to give them, right?

17 "A Yes.

18 "Q These outside firms are -- have -- when you dealt with
19 those outside firms, you dealt with a range of experienced and
20 sophisticated professionals, right?

21 "A Yes.

22 "Q Who had spent many years in the business world, right?

23 "A Yes.

24 "Q And you successfully lied to them, correct?

25 "A Yes.

Cafdc013

"Maggio - cross

1 "Q And they took the false information that you gave them and
2 passed it on to the outside world, right?

3 "A Yes.

4 "Q You have used these innocent outside firms to help carry
5 out Refco's fraud?

6 "A Yes.

7 "Q And you hid critical facts from them, sir -- critical facts
8 from them?

9 "A Excuse me, sir?

10 "Q You hid critical facts from them?

11 "A Yes.

12 "Q Mr. Maggio, you even lied successfully to some of your
13 close personal friends?

14 "A As relates to work, as it relates to business.

15 "Q Rich Casa, for example?

16 "A That's correct, yes.

17 "Q Close personal friend of yours that worked at Chemical
18 Bank, right?

19 "A Yes.

20 "Q There was a crisis in 1997, and you needed millions of
21 dollars, right?

22 "A Yes.

23 "Q And you called him up and told him a lie?

24 "A Yes.

25 "Q He didn't question what you were telling him, right?

Cafdc013

"Maggio - cross

1 "A No.

2 "Q You've lied to your coworkers at Refco?

3 "A Yes.

4 "Q You've lied to numerous investors, right?

5 "A Yes.

6 "Q You've lied to the IRS?

7 "A Yes.

8 "Q To the National Association of Securities Dealers?

9 "A Yes.

10 "Q To hedge funds?

11 "A Yes.

12 "Q To the United States Attorney's office?

13 "A Yes.

14 "Q To numerous counterparties at various contractual
15 obligations that Refco had, right?

16 "A Yes.

17 "Q In fact, you lied on a daily basis for a period of over
18 five years to people that Refco owed money, right?

19 "A Yes.

20 "Q And, sir, you have lied successfully even when you're under
21 intense scrutiny?

22 "A I didn't get the last part, please.

23 "Q You have managed to lie even when you are under intense
24 scrutiny?

25 "A I don't quite understand the question.

Cafdc013

"Maggio - cross

1 "Q Well, in 2004 a firm called Thomas H. Lee took over a
2 majority interest at Refco, right?

3 "A Yes.

4 "Q Mr. Trosten was no longer the Chief Financial Officer,
5 right?

6 "A He left, I think, in September of 2004.

7 "Q And a new Chief Financial Officer came in who knew nothing
8 about the fraud, right?

9 "A Yes.

10 "Q And there was at this point a board overseeing the company
11 that had people from Thomas H. Lee on it, right?

12 "A Yes.

13 "Q And there's something called an Audit Committee on that
14 board, right?

15 "A Yes.

16 "Q And those are outside independent professionals who come in
17 to oversee the audit process, correct?

18 "A Yes.

19 "Q And they can demand to see information, correct?

20 "A Yes.

21 "Q And all of these people, the new CFO, the Audit Committee,
22 the board were there watching what was happening at Refco,
23 correct?

24 "A Yes.

25 "Q You told Mr. Bennett that you were concerned that the

Cafdc013

"Maggio - cross

1 scrutiny would increase once Lee took over the company, right?

2 "A Yes.

3 "Q Yet you continued to commit fraud right under their noses
4 for the next 15 months without being detected?

5 "A Yes.

6 "Q You lied to Refco's board, right?

7 "A Yes.

8 "Q Even after the fraud was discovered?

9 "A Yes.

10 "Q Even after the wrongdoing was found, you continued to play
11 with the truth, right?

12 "A I didn't disclose all of the fraud that was going on at
13 Refco at the time in front of the board.

14 "Q Didn't disclose most of it, right?

15 "A Oh, I disclosed about the receivable, and that was most of
16 it, sir.

17 "Q You lied to the board about a number of things, right?

18 "A I did not tell the entire truth at the board.

19 "Q And, sir, we've been talking about lies, but you have also
20 created fake and bogus documents, right?

21 "A What do you mean by fake and bogus documents, sir?

22 "Q Well, you were asked by BAWAG at one point to set up a set
23 of completely fictitious accounts?

24 "A It wasn't documents, sir. It was an account on Refco, and
25 the answer is yes.

Cafdc013

"Maggio - cross

1 "Q Using a computer?

2 "A Using a computer.

3 "Q So you put fake information into a computer, right?

4 "A Yes. We put fake bonds with a value on the computer.

5 "Q And this wasn't just you are confronted and you coughed out
6 a lie, right; this is you set out to create a complete
7 fabrication, correct?

8 "A Yes.

9 "Q And you created phony accounts, right?

10 "A Yes.

11 "Q With phony values?

12 "A Yes.

13 "Q And that wasn't to help Refco hide a fraud; that was to
14 help BAWAG hide a fraud?

15 "A Yes.

16 "Q Mr. Maggio, when you commit perjury, do you start to sweat?
17 Is there any way someone can tell whether you're lying or not?

18 "A I'm sorry. Could you repeat that?

19 "Q Sure. When you commit perjury, when you lie to a jury, do
20 you start to sweat? Do your eyebrows arch? Is there anything
21 that gives away what you're doing?

22 "A Sir, I'm not going to answer that. I don't know.

23 "Q Is there any objective way that a jury can tell when you're
24 lying as opposed to when you're telling the truth?

25 "A I can tell you I'm telling the truth now.

Cafdc013

"Maggio - cross

1 "Q Any objective way they can know that?

2 "A I can tell you I'm telling the truth now.

3 "Q We have your good word on that, sir?

4 "A You have my good word on it.

5 "Q Let's talk about the money that you made at Refco. This is
6 the money you made by lying, right?

7 "A Yes.

8 "Q You started out your career at a number of different firms,
9 right?

10 "A Yes.

11 "Q But you never made the kind of money there that you made at
12 Refco, right?

13 "A That's correct.

14 "Q When you finished at Refco, you had invested in race
15 horses?

16 "A Yes.

17 "Q And fine wines?

18 "A Yes.

19 "Q And you had a number of homes?

20 "A Yes.

21 "Q And boats?

22 "A Yes.

23 "Q And at the end of the day you had to forfeit whatever you
24 had left, right?

25 "A Yes.

Cafdc013

"Maggio - cross

1 "Q And you forfeited cash and assets totaling \$23 million, is
2 that correct?

3 "A Yes.

4 "Q Part of that 23 million was funded by the \$7 million bonus
5 for just staying put that we've already discussed?

6 "A Excuse me?

7 "Q Part of the money you earned came from the \$7 million
8 stay-put bonus that we've already discussed, right?

9 "A Yes.

10 "Q And there was a point while you were working at Refco where
11 you got an interest in the profits of the company, right?

12 "A Yeah, the profits participation money.

13 "Q And there came a point where Mr. Bennett agreed to buy that
14 interest out from you, right?

15 "A I don't know if it was Refco Group, Limited or who bought
16 the interest -- it could have been Mr. Bennett, RGHI.

17 "Q But you'd gotten money in exchange for giving up that
18 interest, right?

19 "A Yes. Yes, sir.

20 "Q And you got \$8.3 million, correct?

21 "A I believe so.

22 "Q But you wanted more?

23 "A Yes.

24 "Q And you went to Mr. Bennett in July 2005, correct?

25 "A Yes.

Cafdc013

"Maggio - cross

1 "Q And the IPO, the sale of the stock to the public, was just
2 around the corner, correct?

3 "A Yes.

4 "Q And you were in the midst of an SEC investigation
5 concerning Sedona, correct?

6 "A Yes.

7 "Q And Mr. Bennett wanted the SEC investigation resolved
8 before the IPO, right?

9 "A Yes.

10 "Q And it was in your hands whether to fight with the SEC or
11 to settle with them in resolving before the IPO, right?

12 "A Yes.

13 "Q You knew when you met with Mr. Bennett that Mr. Murphy had
14 gotten more money from him, right?

15 "A Yes.

16 "Q You knew that someone named Mr. Fetner had held him up
17 successfully for more money?

18 "A Years earlier, yes.

19 "Q And you knew that Mr. Bennett wanted that SEC case
20 resolved, right?

21 "A Yes.

22 "Q He agreed in that meeting to give you another \$5.2 million,
23 right?

24 "A Yes.

25 "Q In other words, he'd already bought out your interest in

Cafdc013

"Maggio - cross

1 the profits of the company before --

2 "A Yes.

3 "Q At least one year before, right?

4 "A Yes. There were still payments that had to be made over --
5 it was an installment period, but yes.

6 "Q Even though that deal was done in the course of this
7 meeting, you convinced him to give you another 5.2 million,
8 right?

9 "A Yes.

10 "Q Can we put Government Exhibit 2124 on the screen, please.

11 "You saw this on your direct examination, Mr. Maggio,
12 right?

13 "A Yes.

14 "Q This is the agreement where Mr. Bennett agreed to give you
15 another \$5.2 million, right?

16 "A Yes.

17 "Q It's on his letterhead, his personal letterhead, Phil
18 Bennett?

19 "A Yes.

20 "Q It's to you. And this agreement is one that you never
21 disclosed in any public filing connected to the IPO, correct?

22 "A Yes.

23 "Q It's dated July 25, 2005, right?

24 "A Yes.

25 "Q The IPO was on August 5, 2005, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q And you Mr. Bennett kept this to yourself, right?

3 "A I don't know. I do not know who did -- if Mr. Bennett
4 disclosed it to anyone, but I did not.

5 "Q You did not disclose it to anyone else, right?

6 "A Yes.

7 "Q Never told Mayer Brown about it, right?

8 "A I don't recall telling them.

9 "Q You have no recollection whatsoever of ever telling them,
10 right?

11 "A No.

12 "Q And after the IPO, we talked about an IPO that was on
13 August 5th, right?

14 "A Yes.

15 "Q And that's when all of Refco's stock is sold to the public,
16 right?

17 "A No, just a portion.

18 "Q A portion -- excuse me. That's when a portion of Refco's
19 stock is sold to the public, right?

20 "A Yes.

21 "Q And the people who are interested in buying the stock can
22 read something called a prospectus, right?

23 "A Yes.

24 "Q Where they learn about the company and its officers and
25 decide whether it's a good investment, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q And you did not disclose to them that you had gotten this
3 additional \$5 million payment, correct?

4 "A Yes.

5 "Q In fact, there was an initial form filed -- public filing
6 in connection with the IPO called an S1 Form, correct?

7 "A Yes.

8 "Q And in that form you didn't even mention the first \$8
9 million that you got, right?

10 "A Yes.

11 "Q You hid that back, you hid that and lied about your
12 compensation, correct?

13 "A Yes.

14 "Q And then you cut this private deal with Mr. Bennett in late
15 July, right?

16 "A Yes.

17 "Q Your IPO offered to the public on August 5th, right?

18 "A Yes.

19 "Q And then a few days later, on August 8th, there is an
20 amendment to the Form S1 that was filed in connection with the
21 IPO, correct?

22 "A I believe so, yes.

23 "Q And in that amendment you were asked to come clean and
24 disclose the amount of your financial interest in the profits
25 of Refco, correct?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q And this is on August 8th, at least two weeks after you
3 signed the letter on July 25th, right?

4 "A Yes.

5 "Q And in that amendment you didn't tell anyone about this
6 additional \$5 million, right?

7 "A No.

8 "Q You hid it?

9 "A Yes.

10 "Q In fact, sir, you committed perjury at yet another
11 proceeding about this \$5 million, right?

12 "A I need to recall -- I need -- yes.

13 "Q You were asked questions about it under oath and you lied,
14 right?

15 "A Yes.

16 "Q You lied without telling your lawyers, right?

17 "A Yes.

18 "Q You were asked how much money you made at Refco in
19 connection with selling a profit's interest. You said 8
20 million, not \$13 million, right?

21 "A What proceeding was that, sir?

22 "Q It's a proceeding in which you were represented by Mayer
23 Brown.

24 "A What proceeding was that? I'm missing something.

25 "Q Let's go over it slow. Do you remember claims being

Cafdc013

"Maggio - cross

1 brought by a gentleman named Mr. Maccleric?

2 "A Yes, CSFB.

3 "Q He thought he should get some money in connection with the
4 Lee deal, right?

5 "A Yes.

6 "Q He thought he was entitled to a finder's fee for bringing
7 Lee and Refco together, right?

8 "A Yes.

9 "Q He commenced something called an arbitration against Refco,
10 correct?

11 "A NASD arbitration.

12 "Q Under the auspices of one of the major securities
13 regulators here in New York, right?

14 "A Yes.

15 "Q And you were a witness in that arbitration, right?

16 "A Yes.

17 "Q You testified under oath, right?

18 "A Yes.

19 "Q There was a court reporter, right?

20 "A Yes.

21 "Q And you were asked --

22 "A Sir, could you just help my memory and tell me when that
23 arbitration was? What date?

24 "Q Well, the IPO was on August 5, right?

25 "A Of 2005.

Cafdc013

"Maggio - cross

1 "Q Does it refresh your recollection if I tell you that you
2 testified two days earlier, on August 3?

3 "A Maybe.

4 "Q And that would be about ten days after you got the
5 additional \$5 million on July 25?

6 "A Ten days? Excuse me.

7 "Q After you got Mr. Bennett to give you an additional \$5
8 million, right?

9 "A Mr. Bennett did not give me the -- Mr. Bennett did not give
10 me the five-million-two until such time as December 31, 2006.

11 "Q But he agreed to give it to you, right?

12 "A He certainly agreed, but the compensation was never
13 received.

14 "Q So at this arbitration, sir, you were asked a number of
15 questions about the compensation that you were promised, right?

16 "A Excuse me. I don't have that here in front of me to
17 refresh my memory.

18 "Q Well, isn't it a fact, sir, that at this proceeding you
19 referred a number of times to \$8.4 million as the amount of
20 money that you got from the buyout of your profits interest?

21 "A Sir, I don't have that in front of me, so you would have to
22 show me that.

23 "Q Let me show it to you.

24 "A Thank you.

25 "Q I show you what's been marked 3501-78, pages 1778 through

Cafdc013

"Maggio - cross

1 20 --

2 "Mr. Maggio, can we pull up paragraph 2B of this
3 letter. Let's first blow up Paragraph A.

4 "When this was just an \$8 million buyout and not a \$13
5 million buyout, you were supposed to get some installment
6 payments, right?

7 "A Yes.

8 "Q When you and Mr. Bennett signed this deal on July 25, it
9 was contemplated here in Paragraph A that the money would be
10 added to each of those installment payments for an
11 additional \$5.2 million, right?

12 "A Yes.

13 "Q You were to get those on December 31, 2005, and
14 December 31, 2006, right?

15 "A Yes.

16 "Q Unless -- do you see the 'unless' at the end of A?

17 "A Yes.

18 "Q Unless prior to those dates Refco Group Ltd., LLC
19 successfully completes an initial public offering?

20 "A Yes.

21 "Q In which case those amounts will be payable upon the
22 closing of an IPO?

23 "A Yes.

24 "Q Now, Refco Group LLC did successfully complete an IPO,
25 right?

Cafdc013

"Maggio - cross

1 "A Yes. But I don't recall getting the payment, sir.

2 "Q Before the dates --

3 "A But I don't recall getting the payments. I think they blew
4 up before the payments went out.

5 "Q Well, you testified at this arbitration -- I will show this
6 to you to refresh your recollection. Let me show this to you,
7 Mr. Maggio.

8 "Showing you 3501-78. Look at these two.

9 "A Is this in addition?

10 "Q The same exhibit, some additional pages.

11 "A OK. Yes, sir.

12 "Q You were asked about the amount of your profits interest,
13 right?

14 "A They asked me what I was compensated.

15 "Q And you told them \$8.4 million, right?

16 "A Yes, sir.

17 "Q Not in excess of \$13 million, right?

18 "A That is correct.

19 "Q At an arbitration there's someone called an arbitrator,
20 right?

21 "A Yes.

22 "Q Who's like a judge presiding over the proceeding, right?

23 "A No, they are not a judge. I don't know what an arbitrator
24 is legally.

25 "Q You testified under oath at the arbitration that you felt

Cafdc013

"Maggio - cross

1 slighted that you were only getting \$8.4 million and thought
2 you should be getting more, right?

3 "A Yes.

4 "Q You didn't let on to anyone that you had a private
5 arrangement with Mr. Bennett to get another \$5 until, right?

6 "A I would have to see that in the context of the thing. That
7 is not in these documents you gave to me.

8 "Q Joe Collins' law firm was representing you in this
9 arbitration, right?

10 "A Yes.

11 "Q You never told them about the \$5.2 million?

12 "A No, sir.

13 "Q You hid it from them, right?

14 "A I didn't hear the question.

15 "Q You hid it from them, right?

16 "A Did -- I hid the \$5.2 million.

17 "Q Yes.

18 "A I did not reveal it to them.

19 "Q Because if they had seen it, they would have known that you
20 had submitted false information in connection with a public
21 filing --

22 "A I don't know that.

23 "Q -- for the IPO?

24 "A I don't know that, sir. I don't know what they would have
25 done.

Cafdc013

"Maggio - cross

1 "Q You made tens of millions of dollars at Refco, right?

2 "A Yes.

3 "Q And you still cheated on your taxes?

4 "A Yes.

5 "Q Mr. Maggio, you are here under an agreement with the
6 government, right?

7 "A Yes.

8 "Q A cooperation agreement, right?

9 "A Yes.

10 "Q You're facing a total of 65 years in prison, right?

11 "A Yes.

12 "Q And you are hoping to get probation, right?

13 "A Yes.

14 "Q Probation means no prison at all, right?

15 "A Yes.

16 "Q And you are hoping to get probation as a result of the
17 agreement that you entered into with the prosecutors?

18 "A Yes.

19 "Q Under the agreement it is your understanding that if you
20 provide substantial assistance to the government, they will
21 write a letter on your behalf to whichever judge sentences you,
22 right?

23 "A My understanding is that if I cooperate with the U.S.
24 Attorney's Office, they will write what I believe is called a
25 5K letter.

Cafdc013

"Maggio - cross

1 "Q I don't make that decision to write that letter, right?

2 "A No, sir.

3 "Q A judge doesn't make the decision to write that letter,
4 right?

5 "A No, sir.

6 "Q It is the government, the prosecutors, who make the
7 decision whether to write that letter on your behalf, right?

8 "A That is correct.

9 "Q They are the same ones who decide whether you have provided
10 substantial assistance, correct?

11 "A I don't know. My understanding is if I cooperate and they
12 deemed I cooperated and if I tell the truth, they will write a
13 5K letter. That is my understanding about the cooperation
14 agreement.

15 "Q Mr. Maggio, you want the judge who has final sentencing
16 authority over you to receive a letter from the government,
17 right?

18 "A Yes.

19 "Q And you believe that a letter like that may help lower your
20 sentence, right?

21 "A Yes.

22 "Q You want the strongest letter possible, right?

23 "A Yes.

24 "Q Let me put it this way, Mr. Maggio. Would you lie if it
25 was in your own best interest?

Cafdc013

"Maggio - cross

1 "A No, sir. I've already cooperated with the U.S. Attorney's
2 Office. I gave cooperation as it relates to three other people
3 who have now either pleaded guilty or are guilty.

4 "I have given a substantial amount of information as
5 relates to a fraud at BAWAG. They've recovered hundreds of
6 millions of dollars. I am not about to mess it up now at this
7 proceeding.

8 "Q You started cooperating in October 2005, right?

9 "A October 10.

10 "Q That was shortly after the fraud had been discovered?

11 "A That was the same holiday weekend it was discovered.

12 "Q When you started cooperating, you went into the U.S.
13 Attorney's Office with the intention to tell all, to tell them
14 everything you know, right?

15 "A Tell as much as I knew in that short period of time and
16 that day, yes.

17 "Q You knew it was in your interest, sir, to give them as much
18 information as possible, right?

19 "A As much as I could on that particular day.

20 "Q You have met with this office on many different dates,
21 right?

22 "A Yes.

23 "Q Sometimes all day long, right?

24 "A Yes.

25 "Q And you know it is in your interest to identify as many

Cafdc013

"Maggio - cross

1 participants in the fraud as you can?

2 "A Initially, it was explaining to them exactly what the fraud
3 was and the entire scope of the fraud.

4 "Q Initially you explained to them the entire scope of the
5 fraud?

6 "A Well, they didn't know anything about the business. I had
7 to explain to them exactly what we did and the scope of the
8 fraud, so there was a learning curve. There was a learning
9 curve. So on the first day you don't go into everything or the
10 second day or the third day or even a fourth day, all right,
11 every little detail of every fraud. You have to educate them
12 so that they know what the business is, and then you proceed
13 from there.

14 "Q Right. You didn't mention Joe Collins on the first day,
15 the second day, the third day, or the fourth day, right?

16 "A I don't remember when the first time I mentioned
17 Mr. Collins.

18 "Q You didn't mention Mr. Collins for the first year and a
19 half that you were cooperating with the government?

20 "A Actually that is not true.

21 "Q Not true?

22 "A Not true. I recall talking about the CFTC situation very
23 early on in my discussions with the U.S. Attorney's Office.

24 "Q They took notes, right, when you met with them?

25 "A Yes, they did.

Cafdc013

"Maggio - cross

1 "Q When you told them things, they would write things down?

2 "A Yes.

3 "Q And do you remember, you started cooperating in October,
4 2005, right?

5 "A October 10th.

6 "Q Mr. Maggio, you testified, in response to some questions
7 that counsel asked you, that you met with Joe Collins back in
8 1993 when you were noticed to have your deposition taken in
9 connection with the CFTC proceeding, correct?

10 "A Yes.

11 "Q And what you told us was that you had a preparation session
12 with him prior to the deposition, right?

13 "A Yes.

14 "Q You felt you could trust him, right?

15 "A Yes.

16 "Q You said at the beginning words to the effect of, 'Joe, I'm
17 concerned that certain documents don't match up.' And he
18 proceeded in the course of the preparation to give you some
19 techniques on how to handle a deposition so that those facts
20 would be obscured, right?

21 "A I believe what I said was, 'Joe, so you know, the
22 Manufacturers' statement does not match the statement we gave
23 to the FCM.'

24 "Q Just you and Joe Collins were present, right?

25 "A Yes, as far as I remember.

Cafdc013

"Maggio - cross

1 "Q And that's because Mr. Bennett told you he was a lawyer you
2 could trust, right?

3 "A Yes.

4 "Q You said on direct this is like confession a sin, right?

5 "A Yes.

6 "Q And you wouldn't be comfortable saying these things in
7 front of any lawyer, right?

8 "A I wasn't comfortable saying it, but Phil said I can trust
9 him.

10 "Q You couldn't expect any lawyer to sit down with you and
11 tell you how to misdirect federal regulators, right?

12 "A Could you repeat that?

13 "Q I am asking you, you wanted the lawyer that Phil Bennett
14 recommended because you wanted to know how to deal with this
15 situation, right?

16 "A Yes.

17 "Q If this had been another lawyer that Mr. Bennett didn't
18 recommend, you never would have been so open, right?

19 "A Yes.

20 "Q And so you went in and you had this conversation with Joe
21 where you laid it all out, right?

22 "A Yes.

23 "Q By the way, you didn't tell him about the \$25 million being
24 siphoned off, right?

25 "A I believe he understood what I said.

Cafdc013

"Maggio - cross

1 "Q You didn't tell him about it, sir, right?

2 "A Sir, I disagree with you. I believe he understood what I
3 was saying.

4 "Q When you sat down with him face-to-face at that meeting,
5 you didn't mention the \$25 million being siphoned off?

6 "A Sir, he understood the transaction.

7 "Q I'm not asking you your impression of what he understood.
8 I'm asking you what you said to him when you met with him.

9 "You never told him, sir, about \$25 million being
10 siphoned off of customer funds, correct?

11 "A I believe when I told him he understood what I meant.

12 "Q What you told him about was documents, right, and not
13 about \$25 million?

14 "A Excuse me?

15 "Q What you told him about was documents that didn't match,
16 but you didn't tell him about \$25 million, right?

17 "A I told him one statement didn't match the other statement.

18 "Q You didn't say anything about \$25 million being siphoned
19 off, right?

20 "A I did not mention a number, but it was perfectly clear that
21 he understood what I was saying.

22 "Q But you didn't tell him the real reason for the mismatch,
23 right, which was \$25 million being siphoned off?

24 "A Correct.

25 "Q You and he proceeded to have open conversation in which you

Cafdc013

"Maggio - cross

1 confessed your sins and he told you how to deal with the
2 situation, right?

3 "A Sir, I believe I was clear during direct and now that I
4 told him that the Manufacturers' statement did not match the
5 statement to the FCM. That is my confession to him.

6 "Q You don't have any notes or records of what you said to
7 Mr. Collins during that session, right?

8 "A No.

9 "Q We just have your recollection, right?

10 "A Yes.

11 "Q The deposition was in New York, right?

12 "A I believe so.

13 "Q Mr. Collins was at a Chicago law firm, the Schiff Hardin
14 law firm, at the time, right?

15 "A Yes.

16 "Q He flew in the day before to prepare you, right?

17 "A I don't recall when the prep was.

18 "Q Well, do you recall this, sir: That a young lady named
19 Francine Tobin was there in the room the whole time, too?

20 "A In the prep session?

21 "Q Yes, sir.

22 "A I don't recall.

23 "Q That Mr. Bennett never told you that there was a Francine
24 Tobin who was no dummy, did he?

25 "A No, he never said that.

Cafdc013

"Maggio - cross

1 "Q Mr. Bennett never told you Francine Tobin was a lawyer you
2 could trust?

3 "A No, he never said that.

4 "Q She was there the whole time, wasn't she, sir?

5 "A I don't know. I just said I don't recall.

6 "Q Well, let me see if I can refresh your recollection.

7 "I show you what's been be marked Defense Exhibit 748.
8 This is a copy of the transcript of your CFTC deposition,
9 right?

10 "A Yes.

11 "Q You testified yesterday that you were at the deposition
12 with Joe Collins, right?

13 "A Could you repeat the question?

14 "Q Yesterday you testified that you were at the deposition
15 with Joe Collins, right?

16 "A Yes.

17 "Q You didn't mention Ms. Tobin yesterday, right?

18 "A I believe I did.

19 "Q You did?

20 "A He may have.

21 "Q Can we have the transcript from yesterday?

22 "Weren't you asked these questions and did you give
23 these answers yesterday? This is at page 2162, Mr. Maggio."

24 THE COURT: For the reporter, could you just slow down
25 a little bit, please.

Cafdc013

"Maggio - cross

1 MR. SCHWARTZ: I apologize, your Honor.

2 THE COURT: Thank you.

3 MR. SCHWARTZ: (Reading)

4 "This is at page 2162, Mr. Maggio.

5 "'Q During this deposition, was anybody present at the
6 deposition with you?

7 "'A Yes.

8 "'Q Who was present?

9 "'A Joe Collins.'

10 "Do you recall being asked those questions and giving
11 those answers?

12 "A I -- yes.

13 "Q You didn't mention Ms. Tobin, did you?

14 "A No, I did not mention Ms. Tobin.

15 "Q OK. The preparation session was the day before the
16 deposition, right?

17 "A Yes.

18 "Q Ms. Tobin and Mr. Collins worked in Chicago, right?

19 "A I don't know where Ms. Tobin works.

20 "Q She was one of Mr. Collins' -- Joe Collins' colleagues,
21 right?

22 "A I don't know that.

23 "Q She was at the preparation session the day before, correct?

24 "A I do not recall that.

25 "Q Now, you say that part of this preparation was to teach you

Cafdc013

"Maggio - cross

1 how to answer questions about these documents when they arose,
2 right?

3 "A Yes.

4 "Q The fact is, sir, you can't even remember going over any
5 documents with Joe Collins at the preparation session?

6 "A No, I do not remember going over specific documents.

7 "Q The \$25 million that you didn't tell Mr. Collins about was
8 part of the hole, right?

9 "A Was part of the hole?

10 "Q Yes.

11 "A First of all, I don't agree with you about telling him
12 about the \$25 million.

13 "Second of all, the \$25 million I guess was part of
14 the hole, the fact that the firm needed cash.

15 "Q Referring to page 2158 of this transcript, do you recall
16 being asked these questions and giving these answers?

17 "'Q You didn't mention the \$25 million being siphoned off?

18 "'A Right.

19 "'Q In this preparation session, did you mention the fact
20 that \$25 million was being siphoned off?

21 "'A No.'

22 "Do you recall being asked those questions and giving
23 those answers?

24 "A Yes.

25 "Q That \$25 million was the hole, part of the hole, right?

Cafdc013

"Maggio - cross

1 "A I believe it was.

2 "Q You didn't tell Mr. Collins about the hole, right?

3 "A In 1993.

4 "Q You didn't tell him about it in 1993, right?

5 "A I didn't know there was a hole in 1993.

6 "Q You didn't tell him about it in 1994, right?

7 "A I didn't know there was a hole in 1994.

8 "Q You didn't tell him about it in 1995, right?

9 "A I didn't know there was a hole in '95.

10 "Q You didn't tell him about it in 1996, right?

11 "A No.

12 "Q You didn't tell him about it in 1997?

13 "A No.

14 "Q You didn't tell him about it in 1998?

15 "A No.

16 "Q You didn't tell him about it in 1999?

17 "A No.

18 "Q You didn't tell him about it in 2000?

19 "A I don't -- I think -- that's not true.

20 "Q You never once told him that there was hidden intercompany
21 debt at Refco; isn't that a fact, sir?

22 "A Sir, I don't really agree with you. I believed that by
23 Mr. Collins drafting those documents it was --

24 "Q I am asking you what you told him. I am not asking you to
25 make arguments here.

Cafdc013

"Maggio - cross

1 "A I'm not making an argument, sir. You are asking me what I
2 believe.

3 "Q I am asking you what you told him.

4 "A What's the question?

5 "Q Please just answer the question.

6 "A Could you repeat the question, sir?

7 "Q You never told him, meaning words coming out of your mouth,
8 about the hole in 2000, right?

9 "A No.

10 "Q You never told him about it in 2001, right?

11 "A No.

12 "Q 2002?

13 "A No.

14 "Q 2003?

15 "A No.

16 "Q 2004?

17 "A Disagree. When you tell somebody that this place is a
18 piece of shit and it's a house of mirrors and I am going to
19 tell all to everyone, to me I'm telling him that there is a
20 hole here.

21 "Q You are telling him a piece of shit and a house of mirrors,
22 and he heard that there was hidden intercompany debt between
23 RGHI and RGL?

24 "Is that your testimony?

25 "A That's my testimony.

Cafdc013

"Maggio - cross

1 "Q OK. 2005. Did you tell him about the hole in 2005?

2 "A No.

3 "Q You testified yesterday that you had this great
4 relationship of trust with Mr. Collins starting back in 1993,
5 when you and he met alone to discuss the mismatch of the
6 documents, right?

7 "A Yes.

8 "Q You had this great relationship of trust, but when you
9 found out that there were losses in connection with Trader
10 Marine you never told him about it, right?

11 "A No.

12 "Q When Refco engaged in proprietary trading and lost millions
13 of dollars on Philip Morris stock, adding to the hole, you
14 never told Joe Collins about it, right?

15 "A No.

16 "Q You didn't tell Mr. Collins the steps you took in
17 connection with the Niederhoffer situation, correct?

18 "A No.

19 "Q You never told him that the Niederhoffer loss was being
20 moved from Refco Group Ltd. up to the parent, RGHI, right?

21 "A No.

22 "Q Sir, you never told him the purpose of round-trip loans,
23 correct?

24 "A No.

25 "Q In the years from 1993 to 2005, did you ever tell Joe

Cafdc013

"Maggio - cross

1 Collins about the loan?

2 "A Sir, I think I agreed -- I think I answered that by saying
3 in 2004, what I told him was telling him that there was a major
4 hole and a problem.

5 "Q I will rephrase the question.

6 "With the exception of saying this firm is a piece of
7 shit and a house of mirrors in 2004, did you ever tell
8 Mr. Collins about the hole?

9 "A Specific? Those questions?

10 "Q 1993 to 2005 in relation to the questions that I just asked
11 you.

12 "A Did I ever tell him that there was a huge hole in the
13 company? The answer is no.

14 "Q Mr. Maggio, Mayer Brown began to prepare documents for the
15 back-to-back loans in 2000, correct?

16 "A Yes.

17 "Q You didn't tell Mr. Collins that Refco had been doing
18 year-end loan transactions in the preceding years, right?

19 "A No.

20 "Q And just to be clear, at the end of 1999 Refco had debt on
21 its books that it wanted to remove, right?

22 "A debt from RGHI.

23 "A The question is, did Refco Group Holdings, Inc. have debt
24 on its books that it wanted to remove at year end?

25 "Q Yes.

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q And you arranged at Mr. Bennett's instruction for a
3 transaction to take place that would move the RGHI debt off of
4 Refco's books, right?

5 "A I arranged a transaction that would -- a short-term
6 transaction that would pay down a significant portion of the
7 receivable on the books of Refco Group, Limited from RGHI.

8 "Q And you did that in 1999, 1998 and 1997, right?

9 "A Yes.

10 "Q You never told Joe Collins about that, right?

11 "A Yes.

12 "Q And no means you never actually had a conversation with him
13 where you told him about it, right?

14 "A Correct.

15 "Q And you never told Joe Collins that each year there were
16 year-end loans being done with BAWAG, right?

17 "A Correct.

18 "Q Meaning you never had a conversation with him where you
19 used words to tell him that, right?

20 "A Correct.

21 "Q And when it came time, when Refco decided to have Mayer
22 Brown document part of these loans in 2000, you yourself didn't
23 pick up the phone to call Joe Collins, right?

24 "A Correct.

25 "Q Instead, you had David Weaver do it, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q David Weaver was someone who worked under you, right?

3 "A Yes.

4 "Q And David Weaver was someone who Joe Collins had been
5 working with on another transaction, right?

6 "A What transaction was that?

7 "Q It was a transaction involving Ingram Micro.

8 "A Yes.

9 "Q Ingram Micro was the parent company of CIM Ventures, right?

10 "A Yes.

11 "Q CIM, spelled C-I-M, right?

12 "A Yes.

13 "Q That was the first loan that Mayer Brown was asked to
14 document, was a loan involving CIM Ventures, right?

15 "A There were a series of loans per that transaction.

16 "Q And did -- Mr. Collins and your subordinate, David Weaver,
17 had been in the -- at the time were in the midst of a large
18 transaction with CIM's parent company, Ingram Micro, correct?

19 "A Yes.

20 "Q And there were lots of parties to that transaction?

21 "A I don't remember the exact details. I know that Refco was
22 part of the transaction, and I know Ingram was part of the
23 transaction.

24 "Q And there were a lot of law firms working on different
25 pieces of this transaction, right?

Cafdc013

"Maggio - cross

1 "A Yes.

2 "Q A major accounting firm, Pricewaterhouse, came in and
3 helped structure that transaction, right?

4 "A Yes.

5 "Q And Dennis Klejna, who was at that time Refco's general
6 counsel, knew about and was involved in that transaction as
7 well?

8 "A I don't recall that, sir.

9 "Q Let me see if I can refresh your recollection. Let me show
10 you what's marked Defendant's Exhibit 713.

11 "Do you recognize this document, Mr. Maggio?

12 "A Yes."

13 Ms. O'Connor, can you put it on the screen, please.
14 And we're going to blow up Mr. Maggio's name on the first
15 column and the name right under it, the name under
16 "Mr. Maggio."

17 "Mr. Maggio, this was a cover e-mail enclosing a
18 larger document, right? Withdrawn.

19 "The first page of this document is the circulation
20 list for who it's being faxed to, correct?

21 "A Yes.

22 "Q And you and Mr. Klejna are both getting faxes of this
23 document, right?

24 "A It appears that way.

25 "Q And can you see on the second column, do you see Ingram

Cafdc013

"Maggio - cross

1 Micro?

2 "A Yes.

3 "Q That was one of Refco's counterparties in this transaction,
4 correct?

5 "A Yes.

6 "Q And do you see the name Mr. Ricketts over in the first
7 column?

8 "A Yes.

9 "Q He was employed by you at -- he was employed at Micro,
10 right?

11 "A Yes.

12 "Q He was the one who Dennis Weaver was dealing with on the
13 Ingram Micro -- that Dennis Weaver was dealing with on the
14 Ingram Micro transactions?

15 "A Yes.

16 "Q And he was the person that interacted with Dennis Weaver on
17 the first CIM Ventures transaction?

18 "A Yes.

19 "Q And this is dated December 14, 1999, right?

20 "A Yes.

21 "Q Which is just a couple of months before February 2000, when
22 the CIM Ventures loan was documented by Mayer Brown, correct?

23 "A I believe so, yes.

24 "Q And could we turn to the next page?

25 "A Sir, are you talking about the CIM Ventures loan with RGHI?

Cafdc013

"Maggio - cross

1 I apologize, but when you asked that question, were you
2 referring to the CIM Ventures loan with RGHI?

3 "Q I'm talking about what you have called the round robin with
4 CIM Ventures in 2000.

5 "A Yes.

6 "Q Let's look at the next page. This is a memorandum for the
7 working group, right?

8 "A Yes.

9 "Q And at the time you understood that to include the names on
10 the fax transmittal sheet that we just saw, right?

11 "A Yes.

12 "Q Including yourself and Mr. Klejna, right?

13 "A Yes.

14 "Q And the re line, subject line, is CIM Ventures, right?

15 "A Yes.

16 "Q And it says, Attached is a revised draft of the securities
17 purchase agreement, right?

18 "A Yes.

19 "Q And that was one piece of this large transaction that
20 Mr. Weaver and Mr. Collins had been working on, right?

21 "A Yes.

22 "Q In fact, this large transaction involved a sale of stock by
23 Ingram Micro and the transfer of the proceeds of that sale from
24 overseas back into the United States, right?

25 "A I believe that's what it was for. That's what happened.

Cafdc013

"Maggio - cross

1 "Q And one -- part of this large transaction that Mr. Weaver,
2 Mr. Klejna and yourself were working on was tax-driven, right?

3 "A It was clearly a tax shelter.

4 "Q When you say 'tax shelter,' you're talking about they
5 wanted to take the proceeds of this stock sale and bring them
6 back into the United States in the most tax friendly way,
7 right?

8 "A It was a tax shelter, yes.

9 "Q And you believed that it made sense to have David Weaver
10 reach out to do the documents for one of these loans in 2000
11 because similar documents could be used, right?

12 "A I believe that there was a template of a document that
13 could be used for these round robin loans, yes, but there was
14 no security purchase agreement or, you know, in that.

15 "Q But there was a document that was part of this larger
16 transaction that you thought could be used as a template for
17 the loans that you were going to ask Mayer Brown to start
18 documenting in the year 2000, right?

19 "A Yes.

20 "Q And you asked Mr. Weaver, who had been working with
21 Mr. Collins on this larger transaction, to place the call about
22 the first CIM Ventures loan in 2000, right?

23 "A You mean the first round robin in 2000?

24 "Q Yes, what you call a round robin.

25 "A It's the term I use, yes.

Cafdc013

"Maggio - cross

1 "Q Now, when you told Mr. Weaver to call Mr. Collins, you
2 didn't say to Mr. Weaver, tell Joe we're trying to move RGHI
3 debt off our books and we need him to do some paperwork to help
4 us, right?

5 "A No.

6 "Q What you told Mr. Weaver was, tell Joe that Jim Ricketts,
7 of Ingram Micro, and I want to do some more business deals
8 together and we need help with some of the documents; isn't
9 that what you told Mr. Weaver to tell Mr. Collins?

10 "A No. I don't recall saying that to David Weaver.

11 "Q Well, sir, you never told David Weaver the real purpose of
12 these loans, right?

13 "A David Weaver knew the purpose of these loans.

14 "Q Sir, let's talk about conversations. The words never came
15 out of your mouth to Mr. Weaver telling him that the purpose,
16 the real purpose of these back-to-back loans, right?

17 "A Not at that time.

18 "Q Can we put Government Exhibit 2 on the screen.

19 "This transaction has three separate legs, right?

20 "A Yes.

21 "Q And this leg" --

22 THE COURT: Mr. Schwartz, before you get going, when
23 you get to a convenient place, whether before or after you do
24 this, let me know.

25 MR. SCHWARTZ: This would be a convenient place, your

Cafdc013

"Maggio - cross

1 Honor.

2 THE COURT: All right.

3 Ladies and gentlemen, let's take the lunch break now.
4 I see the sun has gone in so let's see what happens next. But
5 would you follow the same rules? Leave your exhibits on your
6 chairs. Leave your books in the jury room.

7 Please remember not to discuss the case among
8 yourselves or with anyone else or to do any research.

9 Would you return at ten after 2, and I'll be looking
10 for the weather report, particularly if it is going to rain.

11 Thank you.

12 THE CLERK: All rise.

13 (Continued on next page)

Cafdc013

"Maggio - cross

1 (Jury not present)

2 THE COURT: Anything else on the record, counsel?

3 MR. CHERNOFF: No, your Honor.

4 MR. SCHWARTZ: Not from us, your Honor.

5 THE COURT: Off the record.

6 (Discussion off the record)

7 (Luncheon recess)

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CAFPCOL4

"Maggio" - cross

A F T E R N O O N S E S S I O N

2:19 P.M.

THE COURT: Thank you. Won't you be seated. We continue with the cross-examination of Mr. Maggio. Mr. Schwartz.

MR. SCHWARTZ: Thank you, Judge.

Starting at Page 2511, Line 18.

Can you put up Exhibit 2 again on the screen, please.

CROSS-EXAMINATION (Resumed)

BY MR. SCHWARTZ:

"Q. Now, this transaction has three legs, right?

"A. Yes.

"Q. And this leg here, referring to the leg between RGHI and Refco, this leg, that's the leg that removes the related-party debt off the books, right?

"A. Yes.

"Q. That's the leg that allowed Refco to hide the intercompany debt from its auditors, right?

"A. Yes.

"Q. Now, counsel introduced a pile of documents and asked you questions about them during your direct examination, right?

"A. Yes.

"Q. There's not a single document in which Mayer Brown ever documented that piece of the transaction, correct?

"A. The pay-down of the RGHI loan?

CAFPCOL4

"Maggio" - cross

1 "Q. That third leg, sir.

2 "A. No.

3 "Q. Can we see defense Exhibit 2.

4 These are the legs that Mayer Brown was asked to
5 document, correct?

6 "A. Yes.

7 "Q. And you never told, meaning words coming out of your mouth
8 in a conversation, you never told Joe Collins about the
9 existence of the third leg?

10 "A. No.

11 "Q. 'No,' meaning you actually never told him, right?

12 "A. Yes, that's correct.

13 "Q. Can we put Government Exhibit 304 on the screen. Blow it
14 up a little bit, please.

15 Now, counsel asked you questions about this document
16 on your direct examination, right?

17 "A. Yes.

18 "Q. It was stipulated that these are Joe Collins' notes, right?

19 "A. Yes.

20 "Q. And it appears to be the notes of a phone call between Joe
21 Collins and David Weaver, right?

22 "A. It appears to be notes of a conversation between David and
23 Mr. Collins, yes.

24 "Q. And counsel took you through every line of these notes,
25 right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. Does it appear that Joe Collins has been told that Refco
3 is -- I'm sorry.

4 Nowhere in here does it appear that Joe Collins has
5 been told that Refco is planning to hide intercompany debt from
6 its auditors, correct?

7 "A. Yes.

8 "Q. Let's change topics. Counsel asked you questions about
9 conversations you had with Joe Collins about RCM and its status
10 as an offshore Bermuda corporation; do you remember that?

11 "A. Yes.

12 "Q. You said that from time to time you consulted Mr. Collins
13 about legal questions relating to how an offshore corporation
14 could do business in the United States and stay in conformity
15 with the law, right?

16 "A. Yes.

17 "Q. And in those conversations, you told us that you
18 communicated to Mr. Collins that you wanted to be able to have
19 access to the cash in the RCM customer accounts, right?

20 "A. Yes.

21 "Q. Now, those accounts are unregulated, right?

22 "A. Yes.

23 "Q. There's no seg requirement, right?

24 "A. Yes.

25 "Q. That means the customer money doesn't have to be segregated

CAFPCOL4

"Maggio" - cross

1 and held for the customer's sole use, right?

2 "A. Yes.

3 "Q. That's why you have unregulated accounts, so you don't have
4 those burdens and requirements associated with them, right?

5 "A. In Refco's situation, they had those unregulated accounts
6 because they needed the cash.

7 "Q. Yes, but Refco had regulated accounts, right?

8 "A. Yes.

9 "Q. And it had unregulated accounts, right?

10 "A. Yes.

11 "Q. And where there's no regulation requiring segregation,
12 Refco was free to use those funds rather than segregate them,
13 right?

14 "A. Yes.

15 "Q. That wasn't some special secret that you could only tell a
16 trusted lawyer, right?

17 "A. That I wanted a company unregulated?

18 "Q. That you could use funds from unregulated accounts instead
19 of keeping them segregated for the customer?

20 "A. I would have had difficulty telling that to another
21 attorney. If there was another attorney, I could never tell
22 them I need the cash.

23 "Q. Mr. Klejna was in the loop on these conversations, correct?

24 "A. Not really. We tried to keep him out of the loop.

25 "Q. You tried to exclude him, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. You wanted these conversations to be just between you and
3 Joe because this was -- this was sensitive stuff?

4 "A. We tried -- I tried to keep him out of the loop as best we
5 can.

6 "Q. By the way, and we're going to get to that. Absolutely
7 nothing wrong with telling someone that you have a need for
8 cash, right?

9 "A. Is there any -- I don't really understand the question.

10 "Q. Well, let me put it this way, Mr. Maggio. Refco went to
11 Chase Bank and said, we need \$100 million in cash revolver,
12 right?

13 "A. Yes.

14 "Q. In fact, Refco went to Chase Bank and said we need \$300
15 million in a cash revolver, right?

16 "A. Yes.

17 "Q. And Chase didn't say, oh, my God, because you need cash,
18 you're uncreditworthy and we can't give you this revolver,
19 right?

20 "A. Correct.

21 "Q. Refco had many short-term needs for cash, right?

22 "A. Yes.

23 "Q. Refco cleared trillions of dollars a day in various
24 transactions and settlements?

25 "A. Billions of dollars.

CAFPCOL4

"Maggio" - cross

1 "Q. Billions of dollars, right?

2 "A. Yes.

3 "Q. And sometimes, for instance, it needed Yen -- just to take
4 for an example -- it would need to have Yen on hand to sell to
5 people who wanted to buy Yen, right?

6 "A. No, that's a not the way it worked.

7 Q. Sometimes it would need to be able to engage in one side of
8 a foreign currency transaction, right?

9 "A. No. All the foreign currency transactions are done on a
10 back-to-back basis, and unless you're taking proprietary
11 positions, which sometimes Refco did, obviously, but the
12 situation is that, at the end of the day, your settlement
13 across the board everywhere should be even. So using -- you
14 know, saying that I need the \$7 out before Yen does not work in
15 this example.

16 "Q. I'll switch it then.

17 "A. Okay.

18 "Q. When Refco told Chase it needed hundreds of millions of
19 dollars in cash, Chase proceeded to lend it the money?

20 "A. But apples and oranges. You're asking for a loan from
21 Chase as opposed to taking customers' funds. It's not the
22 same.

23 "Q. But chase concluded it was a strong business, even though
24 it needed cash, right?

25 "A. Yes.

CAFPCOL4

"Maggio" - cross

1 "Q. You never told Chase -- You were involved in presentations
2 to Chase for the revolver, right?

3 "A. Yes.

4 "Q. And you never told them the real reason you needed cash,
5 right?

6 "A. No.

7 "Q. And you never told Joe Collins the real reason you needed
8 cash, right?

9 "A. Right.

10 "Q. And I think you testified on direct that you went to Joe
11 Collins on two separate occasions to get legal advice about the
12 offshore status of RCM, correct?

13 "A. Yes.

14 "Q. First time he gave you a legal structure to handle the
15 situation, right?

16 "A. Yes.

17 "Q. He gave you legal advice, right?

18 "A. Yes.

19 "Q. And you ignored it?

20 "A. Most of it, yes.

21 "Q. The second time you said that Dennis Klejna had started to
22 raise concerns about the status of RCM, right?

23 "A. Yes.

24 "Q. That you told Mr. Klejna, this is none of your business,
25 and you told Mr. Bennett that this Dennis Klejna guy is butting

CAFPCOL4

"Maggio" - cross

1 in where he doesn't belong, right?

2 "A. Yes.

3 "Q. And you went to Joe instead of Dennis to deal with the
4 situation; that was your testimony, right?

5 "A. Yes.

6 "Q. And you went to Joe, and you said to Mr. Collins, I'm
7 looking for a way to do things legally here, right?

8 "A. I didn't exactly say those words.

9 "Q. But you said you needed some legal advice on how to handle
10 this, right?

11 "A. I think I said that Dennis is butting in where he doesn't
12 belong. I need to -- I need to make certain that RCM could
13 conduct business on shore. I can't have capital issues, and I
14 need Dennis -- I need access to those customer funds. That's
15 what I said, I think.

16 "Q. And Mr. Collins analyzed the situation and gave you advice,
17 right?

18 "A. He gave me a structure or gave me advice, told me he wasn't
19 comfortable with it, said, 'I wouldn't rely on it.' And that's
20 what he did.

21 "Q. But let's look at what Mr. Collins told you. I'll show you
22 what's been marked as Defense Exhibit 737. Blow it up, please.

23 Mr. Maggio, this is a memo from you to Joe Collins, to
24 you -- strike that.

25 Mr. Maggio, this is a memo from Joe Collins to you and

CAFPCOL4

"Maggio" - cross

1 Dennis Klejna and Mr. Keating, right?

2 "A. Yes.

3 "Q. Dated June 24, 2002, right?

4 "A. Yes.

5 "Q. As of June 24, 2002, the Sedona investigation had begun,
6 right?

7 "A. Yes.

8 "Q. You testified that the second time you met with Joe Collins
9 it was because Dennis Klejna had started to raise concerns in
10 connection with the Sedona investigation, right?

11 "A. Yes.

12 "Q. And in this memorandum, Joseph Collins is giving advice in
13 connection with the status of Refco Capital Markets, right?

14 "A. Yes.

15 "Q. It gives you his analysis and recommendations, correct?

16 "A. Yes.

17 "Q. It talks about equity trading, right?

18 "A. Yes.

19 "Q. Convertible trading?

20 "A. Yes.

21 "Q. Mr. Maggio, you were asked questions on direct examination
22 about conversations you had with Mr. Collins concerning
23 bringing offshore equities business on shore; is that correct?

24 "A. Yes.

25 "Q. And does this memorandum that's before you relate to the

CAFPCOL4

"Maggio" - cross

1 advice that Mr. Collins gave you that you testified about on
2 direct examination?

3 "A. In part, yes.

4 "Q. Well, let's take a look at the top with all three names
5 there. Is Mr. Klejna being asked to butt out here?

6 "A. No.

7 "Q. Is he being told to mind his own business?

8 "A. No.

9 "Q. Let's look at the next page. Can we blow this up, please.

10 This is a memo from Joe Collins, right? To the file,
11 right?

12 "A. Yes.

13 "Q. That was circulated under the page we just saw, right?

14 "A. Yes.

15 "Q. Now, let's take a look at the first paragraph. It says,
16 'The following memorandum sets forth information regarding the
17 present activities of Refco Capital Markets, Limited, a Bermuda
18 corporation. Most of the information was obtained during a
19 discussion on June 19th, 2002, with Sandy Maggio and Dennis
20 Klejna,' right?

21 "A. Yes.

22 "Q. Did you keep Mr. Klejna off that phone call?

23 "A. No, sir, but you're misunderstanding what I said. What I
24 said was that Dennis was butting in. He was still going to be
25 informed, but we did not want him to make the end -- the

CAFPCOL4

"Maggio" - cross

1 decision about RCM and the way it conducts business. You're
2 entirely misunderstanding what I said.

3 "Q. You didn't want him to be the decisionmaker?

4 "A. That's exactly right.

5 "Q. The business, Refco as a business, makes the decision after
6 lawyers give the advice, right?

7 "A. Sometimes that doesn't work that way.

8 "Q. But Joe Collins is not the decisionmaker for Refco, right?

9 "A. No.

10 "Q. Joe Collins just gives legal advice, right?

11 "A. Joe Collins was somebody I could talk to and could confide
12 in and tell him what my issues are.

13 "Q. And when he gives legal advice, you're free to ignore it at
14 your peril, right?

15 "A. Yes.

16 "Q. And sometimes you do ignore it, right?

17 "A. Yes.

18 "Q. That's your decision, sir, right?

19 "A. Yes.

20 "Q. He doesn't make that decision?

21 "A. No.

22 "Q. Dennis Klejna doesn't make the decision?

23 "A. No.

24 "Q. He's a lawyer, too, right?

25 "A. That's true.

CAFPCOL4

"Maggio" - cross

1 "Q. Dennis Klejna was on this phone call, right?

2 "A. I didn't want Dennis to come up with the criteria and the
3 restrictions needed. That's a big difference, sir.

4 "Q. Let's go to the last page. Blow up, please, the final
5 paragraph from 'It may be prudent.'

6 This is Joe Collins' final advice in the memo, right?

7 "A. Yes.

8 "Q. And he's telling you it may be prudent to take certain
9 actions, right?

10 "A. Yes.

11 "Q. And you testified on direct that you had gone to Joe and
12 said we need to have access to these customer accounts for
13 cash, right?

14 "A. Yes.

15 "Q. And we need to give them unreg -- keep them unregulated so
16 we can have that access, right?

17 "A. Yes.

18 "Q. Let's look at what Joe Collins is recommending as being
19 prudent here. First, he tells you to consider ceasing certain
20 activities, right?

21 "A. Yes.

22 "Q. Let's look at No. 2. He tells you to consider the
23 transferring of existing options to Refco Securities, Limited,
24 right?

25 "A. Yes.

CAFPCOL4

"Maggio" - cross

1 "Q. To transfer existing options to RCM, which is unregulated,
2 right, to Refco Securities, Limited, which is regulated, right?

3 "A. Yes.

4 "Q. If these things were transferred to a regulated entity, you
5 wouldn't have the same access to them as you would in an
6 unregulated entity?

7 "A. But they had no cash. The issue was these -- these points
8 that are here are irrelevant to Refco for the cash. This was
9 discussed prior to this memo coming out. The real issue is in
10 the financing. That was my big issue that was discussed with
11 Joe. That's what we needed to have. This is crap. This meant
12 nothing to us.

13 There was no money involved. There was no capital
14 involved. This was discussed prior to the memo, and this is
15 what he gave us so we could keep the business offshore and
16 appease some of the real -- some of the issues and appease the
17 SEC. That's why this memo came out.

18 "Q. He's not saying this here, sir, keep the business offshore.
19 He's saying consider moving it to Refco Securities?

20 "A. Oh, yes, he is. You must see the rest of the memo. Let's
21 take a look at it. We have the financing. We have foreign
22 exchange. He's saying to keep it offshore. That's what was
23 really meant for us. That's where all the cash was.

24 "Q. Well, let's look at No. 3. He's saying transfer any equity
25 trading client to Refco Securities, Limited, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. That's to the regulated entity, right?

3 "A. Again, there was nothing involved in that. There was no
4 money involved in that. There was no customer assets involved
5 in that.

6 "Q. So you went to Joe to get advice, which was crap, about
7 something you had no money in?

8 "A. That's right.

9 "Q. That's why you go to a lawyer when you work for Refco?

10 "A. No. I went to a lawyer to protect the issue that we had.
11 We did not want to lose the foreign exchange, the financing,
12 the emerging market debt. That's where all our cash -- that's
13 where all the customer cash was tied up. That's why I went to
14 Joe.

15 These five items were saying, you know what, Joe,
16 just, you know, move them over. It doesn't matter to us.
17 There's no money in it. There's no cash. There's no capital
18 usage. I'm sorry if I raised my voice, sir.

19 "Q. Mr. Maggio, there's absolutely nothing in this memo that is
20 hidden from Dennis Klejna, correct?

21 "A. Correct.

22 "Q. Dennis Klejna was the former general counsel of a major
23 United States regulator, right?

24 "A. He was --

25 "Q. Former general counsel of the CFTC?

CAFPCOL4

"Maggio" - cross

1 "A. CFTC, I don't know what his position was.

2 "Q. You testified on direct that in 2003, the question arose as
3 to whether you should be represented by your separate lawyer in
4 the Sedona investigation, right?

5 "A. I don't know if the question was rose. I was told I need
6 to catch up with counsel.

7 "Q. Wilmer Cutler had been representing Refco in the
8 investigation, right?

9 "A. Yes.

10 "Q. And the recommendation about whether you should proceed to
11 have the same firm, Wilmer Cutler, that was representing Refco
12 represent you as well, right?

13 "A. I'm sorry. I apologize. I didn't get that.

14 "Q. One of the issues that arose in 2003 was whether you had to
15 have your own lawyer in the Sedona investigation, right?

16 "A. Yes.

17 "Q. And in 2005, the same issue arose again, right?

18 "A. In what instance, sir?

19 "Q. In 2005, you learned that the SEC was considering charging
20 you for what it calls negligent supervision of some of Refco's
21 employees, right?

22 "A. Yeah. I consider that all the same incident, the 2003 to
23 2005.

24 "Q. In 2003, what you knew was that your deposition was coming
25 up, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. No one told you you were being charged in 2003, right?

3 "A. No.

4 "Q. 'No' meaning no one told you you were going to be charged
5 in 2003, right?

6 "A. Yes, that's correct.

7 "Q. In 2005, two years later, you were told that the SEC was
8 going to go ahead and charge you, right?

9 "A. Yes.

10 "Q. Refco was going to be charged as an entity as well, right?

11 "A. Yes.

12 "Q. And you knew from Mr. Bennett and others that Refco wanted
13 to settle this dispute with the SEC, right?

14 "A. Yes.

15 "Q. And you had the right, sir, even though Refco was settling,
16 to continue to fight the charges that the SEC planned to bring
17 against you, right?

18 "A. Yes.

19 "Q. And if you wanted to fight, you would have to get your own
20 lawyer, right?

21 "A. Yes.

22 "Q. And so in 2005, when you were told that you were being
23 charged, you were given the option again of getting your own
24 lawyer, correct?

25 "A. Sir, I do not think that's the way it happened. To me,

CAFPCOL4

"Maggio" - cross

1 nobody came up to me in 2005 and said, Sandy, you're going to
2 get charged. You need to have your own option. You need to
3 have your own attorney.

4 It was assumed, for me, that Mr. Collins was my
5 attorney from 2003 and that he was going to represent me all
6 the way to the end, even if it meant the end.

7 "Q. But you understand, sir, that if Joe was representing
8 Refco, which wants to settle, he can't represent you if you
9 choose to fight? You understood that at the time, right?

10 "A. Sir, I didn't choose to fight because Joe was my counsel,
11 and he was representing myself and Refco.

12 "Q. Now, in 2005, you became aware that you were going to be
13 charged, Joe Collins and -- withdrawn.

14 In 2005, when you became aware that you were going to
15 be charged, Joe Collins and Lisa Dunskey of the Mayer Brown firm
16 had been representing you, right?

17 "A. Yes.

18 "Q. And they explained to you that, under the circumstances,
19 because your personal interests might be different from Refco
20 as an entity, that you should consider getting your own lawyer,
21 right?

22 "A. No, no. Nobody from Mayer Brown told me, Sandy, you should
23 get your own lawyer.

24 "Q. Didn't they?

25 "A. Our biggest concern, actually, with Mayer Brown is what

CAFPCOL4

"Maggio" - cross

1 sort of charges -- how could we keep it down, and what would my
2 position be after it's all said and done.

3 But nobody, sir, nobody from Mayer Brown came to me
4 and said, Mr. Maggio, you should get your own counsel. There's
5 a -- you know, a -- I don't know, I guess a conflict.

6 "Q. Sir, once you decided to fight, you had conversations with
7 Mayer Brown about how to minimize your exposure to funds,
8 right?

9 "A. Yes.

10 "Q. But before that, Miss Dunsky and Mr. Collins told you that
11 because you had your own personal interests, you should
12 consider seriously the option of retaining your own lawyer,
13 didn't they?

14 "A. Sir, I do not recall that.

15 "Q. Didn't they tell you that Refco would pay for it, if you
16 wanted it?

17 "A. No. That was Mr. Klejna telling me that with Wilmer
18 Cutler. Wilmer Cutler said that I should get my own counsel,
19 and Mr. Klejna said Mr. -- he said, Sandy, Refco will pay for
20 it, but I don't recall a conversation from anyone from Mayer
21 Brown saying, Sandy, get your own lawyer.

22 "Q. Well, in 2005, when the SEC wanted to charge you, you
23 didn't feel that you'd done anything wrong, right?

24 "A. As it relates to the charges that they put forward?
25 Obviously, I did something wrong as it relates to --

CAFPCOL4

"Maggio" - cross

1 "Q. As to the Sedona charges the SEC was pursuing. When you
2 learned what they were going to charge you on, you felt that
3 those charges were unjustified, right?

4 "A. Yes.

5 "Q. And you, in words or conduct, made plain that you weren't
6 prepared just to fold, right?

7 "A. Yes.

8 "Q. And Mr. Collins and Miss Dunskey said to you, Sandy, the
9 company is going to fold. If you want to fight, you have to
10 get your own lawyer, right?

11 "A. Sir, I don't recall. I do not recall that. There were --
12 to me, there was always the intention that Joe would be my
13 attorney from beginning to the end, and no one other than
14 Dennis in the beginning gave me another option.

15 "Q. I am not asking for your intention. I'm asking you for --
16 wasn't it communicated to you that it made sense, given the
17 circumstances, that you consider retaining your own lawyer,
18 whether or not you ultimately decided to retain the lawyer?

19 "A. I do not recall anyone from Mayer Brown saying, Sandy, if
20 you intend to fight, get your own counsel.

21 "Q. But in 2005, you all agreed that you had a decision to make
22 about whether you wanted to fight these charges or not, right?

23 "A. Yes.

24 "Q. And the IPO was set to take place on August 5th, right?

25 "A. Yes.

CAFPCOL4

"Maggio" - cross

1 "Q. And Mr. Bennett wanted to know whether you were going to
2 continue, whether you want to fight or fold, right?

3 "A. Yes.

4 "Q. And you approached him in late July to discuss the matter,
5 right?

6 "A. I approached him. I don't remember if it was in late July.

7 "Q. But you had some leverage, right?

8 "A. Yes.

9 "Q. Because if you said you wanted to fight, that was going to
10 complicate the IPO, right?

11 "A. Yes.

12 "Q. And you saw this as an opportunity to get some more money,
13 right?

14 "A. Yes.

15 "Q. And you got more money, right?

16 "A. I was promised more money, yes.

17 "Q. That's the \$5.2 million we were talking about earlier,
18 right?

19 "A. Yes.

20 "Q. And this is when you said to Mr. Bennett, let the chips
21 fall where they may. If I have to get my own lawyer and fight
22 this, all hell is going to break loose, right?

23 "A. No, sir, that's not when I said that. I believe what my
24 testimony is, and I've said it consistently, that in June of
25 2003 when I was told -- when I was told that I had to get my

CAFPCOL4

"Maggio" - cross

1 own counsel, there's a time I walked into Phil's office after
2 my initial conversation with Mr. Collins that, all right, that
3 this is war. All hell will break loose if I have to get my own
4 attorney.

5 "Q. Sir, in 2003, there was no reason for you to have to resort
6 to those tactics, right?

7 "A. Sir, if I had to get my own counsel in 2003, I would have
8 to tell them everything about what went on, and that was my
9 message to Mr. Bennett, and that's what I told Mr. Bennett.

10 "Q. Mayer Brown wasn't telling you you had to get your own
11 counsel in 2003, right?

12 "A. Mayer Brown wasn't our counsel in 2003. It was Wilmer
13 Cutler who was the counsel in 2003 at that time.

14 "Q. But Mr. Klejna told you that he didn't see any need for you
15 to have separate counsel in 2003, and that he thought that
16 Wilmer Cutler's approach was a little bit overboard, right?

17 "A. I don't recall that conversation. What I do recall is
18 Mr. Klejna coming to my office and telling me that Wilmer
19 Cutler is -- suggests that you get your own counsel, and then
20 me going ballistic.

21 "Q. Sir, you weren't told you were going to be charged in 2003,
22 right? That didn't come up until 2005, right?

23 "A. That's correct.

24 "Q. Mr. Maggio, do you recall a meeting with the government on
25 May 30, 2007?

CAFPCOL4

"Maggio" - cross

1 "A. No.

2 "Q. Let me show you what's been marked 3501-33. Didn't you
3 tell the government, sir, when you met with them and discussed
4 this topic, that the conversation took place not in 2003, but
5 after Refco had concluded the LBO with Lee?

6 "A. Yes. Initially I told the government that, and I was wrong
7 on my dates.

8 "Q. You were wrong on your dates?

9 "A. Yes, sir.

10 "Q. Initially, sir, didn't you tell the government that the
11 conversation occurred at the time that the SEC was holding up
12 the registration for the IPO --

13 THE COURT: Mr. Schwartz.

14 MR. SCHWARTZ: I'm sorry.

15 "Q. Initially, sir, didn't you tell the government that the
16 conversation occurred at a time when the SEC was holding up the
17 registration for the IPO because of your issue?

18 "A. The conversation was what, sir?

19 "Q. That the SEC was holding up the IPO because of your issue?

20 "A. Well, that's true. The SEC was holding up the IPO because
21 of my issue.

22 "Q. That was in 2005, right?

23 "A. Yes.

24 "Q. That's not just a mistake about the date. You're telling
25 the government the context, right?

CAFPCOL4

"Maggio" - cross

1 "A. No, sir. I don't understand it. I do not understand it,
2 the line of questioning. Could you --

3 "Q. I will break it down.

4 "A. Okay, please.

5 "Q. The IPO was on August 5, 2005, right?

6 "A. Yes.

7 "Q. Not 2003, right?

8 "A. Correct.

9 "Q. And you told the government about this conversation, you
10 said it occurred after the LBO, right?

11 "A. Which conversation?

12 "Q. The one that you claim you had with Joe about telling him
13 house of mirrors and the firm is shit?

14 "A. That Klejna had with Joe or me?

15 "Q. You.

16 "A. Okay. So, I'm sorry.

17 "Q. When you initially described this, you put it in 2005, near
18 the IPO, right?

19 "A. Yes. When I initially told it to the government, I told
20 them it was 2005, but in fact, it was in 2003.

21 "Q. What really happened, sir -- what really happened to you,
22 sir, was that you told Mr. Bennett, I will take the suspension.
23 I will eat the charges, and I want some money in return, right?

24 "A. In a nutshell, yes.

25 "Q. You said to him, 'If I have to get my own counsel and fight

CAFPCOL4

"Maggio" - cross

1 this thing, let the chips fall where they may'?

2 "A. No. What I actually said with Mr. Bennett was, 'We have
3 been through a lot together. I will never do anything' -- and
4 I'm sorry, I'm quoting -- 'to fuck up the IPO, never. However,
5 I think I should be compensated for taking this fall, and I
6 want to be Joe's equal.'

7 "Q. Mr. Bennett agreed to give you more than \$5 million as a
8 result of this conversation, right?

9 "A. Yes, sir.

10 "Q. That wasn't out of the goodness of his heart?

11 "A. No.

12 "Q. It was because you pressured him, right?

13 "A. Yes.

14 "Q. And once he agreed to give you \$5.2 million more, there was
15 no reason for you to call up Joe Collins and tell him what a
16 piece of shit firm this was, right?

17 "A. I didn't tell him that. I told him that in 2003.

18 "Q. When you initially described this set of interactions to
19 the government, you put it in 2005, right?

20 "A. Understood. I told you that I was wrong on the date that I
21 told them. The conversation happened in 2003, after Wilmer
22 Cutler told me that I had to get my own counsel.

23 "Q. All we have, sir, is your word on that, right?

24 "A. About the timing about Wilmer Cutler?

25 "Q. Yes.

CAFPCOL4

"Maggio" - cross

1 "A. No. Wilmer Cutler, you can call somebody from Wilmer
2 Cutler.

3 "Q. When you spoke to Joe Collins in which you had told him
4 you -- withdrawn.

5 You had a conversation with Joe Collins in which you
6 told him that you had broken the law in connection with NCTI
7 stock, right?

8 "A. Yes.

9 "Q. And there's no record of that conversation, right?

10 "A. No record of that conversation? Not that I'm aware of.

11 "Q. You didn't take any notes, right?

12 "A. No. I would not take notes saying I committed a crime.

13 "Q. You're not aware of any e-mails memorializing it, right?

14 "A. No.

15 "Q. The only version we have of what you say occurred here is
16 from you, right?

17 "A. Yes.

18 "Q. And when you went to the SEC, you lied about NCTI stock,
19 right?

20 "A. Yes.

21 "Q. You didn't tell them that you had broken the law on NCTI
22 stock, right?

23 "A. No.

24 "Q. You went next to the United States Attorney's Office,
25 right, and you didn't tell them that you had broken the law in

CAFPCOL4

"Maggio" - cross

1 connection with the NCTI stock, right?

2 "A. Tell who, sir?

3 "Q. United States Attorney's Office in 2005, late 2004, early
4 2005?

5 "A. No, sir.

6 "Q. Before you were cooperating, right?

7 "A. Correct.

8 "Q. In fact, you were lying and misleading the United States
9 Attorney's Office?

10 "A. Yes, sir.

11 "Q. Nothing prevented you, sir, from lying about your role in
12 connection with the NCTI stock without having to tip off Joe
13 Collins?

14 "A. But I did tip him off. I did tell him.

15 "Q. So you lied to the U.S. Attorney's Office about it, right?

16 "A. Yes.

17 "Q. You lied to the SEC about it, right?

18 "A. Yes.

19 "Q. You lied to Lisa Dunskey about it, right?

20 "A. I don't know.

21 "Q. But you say you picked up the phone, and with no witnesses
22 on the call, you happened to tell Joe Collins the truth?

23 "A. I told Joe Collins that I allowed Solomon Obtsfeld to short
24 the stock illegally without converting the stock. That's what
25 I told him.

CAFPCOL4

"Maggio" - cross

1 "Q. I think you still have 3501-33 in front of you.

2 "A. Excuse me?

3 "Q. May 30, 2007, you've been cooperating with the government
4 for about 18 months, right?

5 "A. Yes.

6 "Q. This is the first time you debriefed them about your
7 contacts with Mr. Collins?

8 "A. With who?

9 "Q. Mr. Collins. The first time you told them about this
10 conduct with Mr. Collins, right?

11 "A. Sir, I don't recall when they started debriefing me.

12 "Q. You told them -- You had already covered a lot of topics
13 with the U.S. Attorney's Office over the past 18 months, right?

14 "A. We covered a significant amount of topics. It was a
15 learning curve, and then after the learning curve, then they
16 just asked me questions and the shoe was on the other foot.
17 They started asking me, and I started answering as opposed to
18 me educating.

19 "Q. They set up a conference call with you on this date to find
20 out what you knew about Joe Collins, right?

21 "A. I assume so. That's what the notes say.

22 "Q. Mr. Maggio, in this conversation, did you tell them -- you
23 talk about the Sedona investigation, correct?

24 "A. Yes.

25 "Q. This is when you placed the conversation in 2005, right,

CAFPCOL4

"Maggio" - cross

1 the one I just showed you?

2 "A. Yes, sir.

3 "Q. You never told the government that you had told Joe Collins
4 in advance of giving sworn testimony that you had done
5 something illegal on NCTI stock?

6 "A. Sir, I told the government about NCTI.

7 "Q. You told them about it not in the very first meeting,
8 right?

9 "A. I don't know when, sir.

10 "Q. Your testimony, sir, is that it's something you added
11 later, right?

12 "A. Sir, I don't recall when I told the U.S. Attorney's Office
13 about the NCTI illegal shorting to Mr. Collins.

14 "Q. On May 30, 2007, they asked you to tell them what you knew
15 about Joe Collins, right?

16 "A. Yes.

17 "Q. You understood that it was part of the process of
18 cooperation to give them information they might be interested
19 in, right?

20 "A. It was part of my cooperation agreement that I cooperate
21 and answer the questions that they asked me.

22 "Q. And you understood they were investigating possible crimes,
23 right?

24 "A. Yes.

25 "Q. You never told them about any phone call when you met with

CAFPCOL4

"Maggio" - cross

1 them on May 30, 2007, in which you tipped off Joe Collins to
2 the fact that you engaged in illegal trades in NCTI stock?

3 "A. Sir, I don't remember when I told them. These are not my
4 notes. I did not write them.

5 "Q. Let me show you, Mr. Maggio, what's been marked as defense
6 Exhibit 705. I ask if you recognize this document?

7 "A. No, sir.

8 "Q. Are you familiar with Refco subsidiary known as Refco,
9 Inc.?

10 "A. Yes.

11 "Q. Have you ever seen this operations manual?

12 "A. Could you, sir -- I'm sorry. I apologize.

13 "Q. Have you ever seen its operations manual?

14 "A. No.

15 "Q. When you joined Refco, there were three shareholders,
16 right?

17 "A. You're talking about Refco, Refco Group?

18 "Q. Yes.

19 "A. That is what I'm aware of, yes.

20 "Q. In other words, three people who shared the ownership of
21 Refco, right?

22 "A. Yes.

23 "Q. One was Mr. Bennett, right?

24 "A. Yes.

25 "Q. One was Mr. Grant, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. And one was Mr. Dittmer, right?

3 "A. Yes.

4 "Q. At the time you joined, Mr. Dittmer held half of the
5 ownership interest?

6 "A. I believe it was a little bit more than half, yes.

7 "Q. He continued to hold a little bit more than half through
8 1999 when he left Refco, right?

9 "A. I'm not sure of the exact year that they transferred the
10 ownership.

11 "Q. Up until that transfer, he held about more than 50 percent
12 of the interest, right?

13 "A. I believe so, yes.

14 "Q. It was the CEO of Refco, right?

15 "A. Who, sir? Mr. Dittmer?

16 "Q. Yes.

17 "A. He was the Chairman.

18 "Q. The Chairman?

19 "A. The Chairman.

20 "Q. He was the principal person in charge of Refco, right?

21 "A. He was the Chairman. I don't know if he was involved in
22 the day-to-day operations.

23 "Q. And Mr. Dittmer was reputed to be a billionaire, right?

24 "A. No, sir.

25 "Q. You became aware, while you were at Refco, that he liked to

CAFPCOL4

"Maggio" - cross

1 trade money, right?

2 "A. Yes.

3 "Q. And you learned in the course of your employment at Refco
4 that his trading resulted in significant losses for Refco?

5 "A. Yes.

6 "Q. You told us about losses in Phillip Morris stock. Do you
7 remember that?

8 "A. Yes.

9 "Q. There were trading losses related to Mr. Dittmer -- Those
10 were trading losses related to Mr. Dittmer, right?

11 "A. Yes.

12 "Q. And those losses added to the hole at Refco, right?

13 "A. Yes.

14 "Q. And Mr. Dittmer had an associate named Mr. Cox, right?

15 "A. You have to define what you mean by an 'associate.'

16 "Q. Well, he had a business partner named Mr. Cox, right?

17 "A. I don't know the exact relationship, but he knew Mr. Cox,
18 yes.

19 "Q. Mr. Cox and Mr. Dittmer ran a hedge fund together that they
20 called MLC, right?

21 "A. I know Mr. Cox ran a hedge fund. I don't know if Tom was
22 part of running that hedge fund. I do know that they traded in
23 that hedge fund.

24 "Q. Mr. Maggio, you testified at a proceeding in this
25 courthouse in 2008, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. You were asked the following questions and gave the
3 following answers, correct?

4 This is at Page 2060:

5 'Question: And Mr. Cox was a business associate of
6 Mr. Dittmer, right?

7 'Answer: Yes.

8 'Question: And they together were involved in a hedge
9 fund called MLC?

10 'Answer: Yes.'

11 Were you asked those questions and did you give those
12 answers?

13 "A. Yes. I don't know exactly inside the hedge fund what the
14 structure was. I know Mr. Cox ran the hedge fund, and he
15 helped raise the money. I don't know what Tom's role was.

16 "Q. Mr. Maggio, I don't mean to be so subtle. I think all I
17 asked you was whether you knew that they were business
18 associates and ran this hedge fund together?

19 "A. I know they were business associates. Again, the running
20 of the hedge fund, I am not quite certain.

21 "Q. You know Mr. Dittmer was involved in one way or the other
22 with MLC, right?

23 "A. Yes.

24 "Q. MLC was one of the parties that was involved in the
25 year-end loans in 1999 and 1998, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. Those were loans that were used to move the RGHI debt off
3 the books and hide it from Refco's auditors, right?

4 "A. Yes.

5 "Q. At the time that was happening, Mr. Dittmer was the
6 majority owner of Refco, right?

7 "A. I don't remember in 1999 when he left. I think what
8 happened was that he transferred some of the shares to Ed Cox
9 and got an equity option of something of the sort in '98.

10 "Q. Would you agree, sir, that some of Mr. Dittmer's trading
11 activities led to an increase in the hole, right?

12 "A. Yes.

13 "Q. And you agree that his hedge fund was involved, in 1998 and
14 1999, in shifting that hole off the books of Refco, right?

15 "A. Yes.

16 "Q. I believe you called the hole the other day the essence of
17 the fraud at Refco?

18 "A. I don't recall those exact words, sir.

19 "Q. Mr. Maggio, you pleaded guilty in this case in December of
20 2007; is that correct?

21 "A. Yes. I believe it was December 19 or December 22nd, 2007.

22 "Q. At about that time your wife bought back for you one of
23 your boats, right?

24 "A. Yes.

25 "Q. The Glacier Bay, right?

CAFPCOL4

"Maggio" - cross

1 "A. Yes.

2 "Q. And your hope is to use the Glacier Bay as a business,
3 right?

4 "A. Yes.

5 "Q. You want to run fishing trips and pleasure trips for
6 customers, right?

7 "A. Yes.

8 "Q. You have opened a website in connection with the business,
9 right?

10 "A. Yes.

11 "Q. And the business goes under the name of Starting Over
12 Charters?

13 "A. Yes.

14 "Q. You are known on your website as 'Captain Sandy,' right?

15 "A. Yes.

16 "Q. And the pleasure expeditions you would run are on the
17 waters off the Florida coast, right?

18 "A. Yes, out of the Naples area.

19 "Q. Mr. Maggio, you committed crimes at Refco for over ten
20 years, right?

21 "A. Yes.

22 "Q. And investors lost billions of dollars, right?

23 "A. Yes.

24 "Q. You are hoping, sir, to walk out of here a free man and
25 start over and run that pleasure expedition company, correct?

CAFPCOL4

"Maggio" - cross

1 "A. I was hoping to run it during this period and, yes, I'm
2 hoping to run it afterwards."

3 MR. SCHWARTZ: No further questions.

4 THE COURT: Thank you. Redirect, counsel?

5 REDIRECT EXAMINATION

6 BY MR. IMPERATORE:

7 "Q. Mr. Maggio, prior to 1993, in the time that you gave that
8 deposition to the CFTC, you had lied in connection with your
9 work at various financial institutions or firms, correct?

10 "A. Yes.

11 "Q. You committed fraud, correct?

12 "A. Yes.

13 "Q. You had evaded taxes; is that right?

14 "A. Yes.

15 "Q. Was it wrong to do those things?

16 "A. Yes.

17 "Q. Did you need a lawyer to help you commit those crimes?

18 "A. No.

19 "Q. Now, from 2000 to 2005, did you commit any crimes in
20 connection with the amount of money that RGHI owed to Refco?

21 "A. Yes.

22 "Q. Specifically, what crime did you commit with regard to that
23 debt that was owed from RGHI to Refco?

24 "A. We moved the receivables off the books over fiscal year
25 ends and over quarter ends to hide the true debt from the

CAFPCOL4

"Maggio" - redirect

1 auditors so we can give out false financials.

2 "Q. Did you have the help of a lawyer in connection with that
3 crime?

4 "A. Yes.

5 "Q. Who was it?

6 "A. Joe Collins.

7 "Q. How so?

8 "A. Joe drew up the documents. He would be the only one I went
9 to. He knew the structure of the documents, the documents
10 showed loans, indemnities and guarantees. They went back and
11 forth, and there were three legs to that document. Without any
12 one of those legs, that transaction, that fraud would not be
13 conducted.

14 "Q. Mr. Smith, could you please bring up Government Exhibit 2?
15 Thank you.

16 Do you remember, Mr. Maggio, that counsel asked you
17 some questions about this chart, right?

18 "A. Yes, sir.

19 "Q. He asked you whether or not Mr. Collins knew about the
20 amount of money that was being paid out from RGHI to Refco. Do
21 you recall those questions?

22 "A. The amount?

23 "Q. Yes.

24 "A. Yes.

25 "Q. Do you remember that he asked you to take a look at a

CAFPCOL4

"Maggio" - redirect

1 different chart and that different chart was Defense Exhibit 2,
2 right?

3 "A. Yes.

4 "Q. Mr. Smith, could you please bring up Defense Exhibit 2?

5 Thank you.

6 This is the chart that he showed you during the
7 cross-examination, right?

8 "A. Yes.

9 "Q. He asked you if this accurately represented the documents
10 in connection with the round-robins, as you called them, right?

11 "A. Yes.

12 "Q. Now, Mr. Maggio, does this document accurately represent
13 all of the features of the round-robins that we've been talking
14 about?

15 "A. No.

16 "Q. Mr. Smith, if you could bring up Government Exhibit 2B,
17 please, which Mr. Maggio was not shown.

18 Now, Mr. Maggio, how was this graph different from the
19 last one that we just saw?

20 "A. The graph is different than what I saw on the cross in that
21 Refco Group, Limited, the parent company, is giving to a
22 customer guarantees and indemnities to make sure that the
23 customer has no risk in this transaction whatsoever.

24 "Q. What was the significance of having no risk in this
25 transaction?

CAFPCOL4

"Maggio" - redirect

1 "A. The significance of having no risk in the transaction is
2 because the customer wanted to make money. It was a fraud.
3 They wanted to make their 15 basis points; so there was no
4 financial gain, other than what the customer was going to
5 receive and no risk whatsoever.

6 And the fact that Refco Group is guaranteeing an
7 outside holding, a non-consolidating operating company, is the
8 one that's very significant.

9 "Q. By the way --

10 "A. Go ahead.

11 "Q. By the way, Mr. Maggio -- I'm sorry. I cut you off, but
12 just a quick question.

13 Were you aware, in connection with the Lee
14 transaction, whether or not Lee or its representatives asked
15 for information about guarantees and indemnities?

16 "A. No.

17 "Q. Mr. Maggio, counsel asked you about Defendant's
18 Exhibit 713.

19 If we could just bring this up, please.

20 Do you remember he showed you this document? It's a
21 fax from a woman named Alexandra Valdes-Faul, and it includes
22 you and Mr. Klejna and Mr. Weaver and Mr. Ricketts on this fax.
23 Do you recall that?

24 "A. Yes.

25 "Q. If you would turn to the next page of it. It's a document

CAFPCOL4

"Maggio" - redirect

1 dated December 14th, 2009. Do you see that?

2 "A. Yes.

3 "Q. And if we could just leave that up there.

4 Counsel asked you some questions about what type of
5 transactions this document related to. Do you remember that?

6 "A. Yes.

7 "Q. What type of transaction did this document relate to?

8 "A. It related to a tax shelter.

9 "Q. Just generally, how did the tax shelter work?

10 "A. The tax shelter works where they were moving offshore money
11 onshore.

12 "Q. Whose offshore money onshore?

13 "A. CIM's offshore money onshore in this case. I'm sorry.
14 Ingram Micro's money offshore, onshore.

15 "Q. Mr. Maggio, I think you testified on both direct and
16 cross-examination that you understood that when you were
17 thinking about doing the round-robin transactions, you were
18 aware that they had some documents relating to these tax
19 shelters that could be used in with the round-robins; is that
20 right?

21 "A. I think I said on the cross that there was a template of a
22 document that may be used, that could have been used.

23 "Q. All right. Let's be clear about this, Mr. Maggio. Were
24 the tax shelter transactions that Mr. Collins had worked on
25 with Mr. Weaver and others at Refco prior to 2000, anything

CAFPCOL4

"Maggio" - redirect

1 like, in any way, the round-robin transactions that Mayer Brown
2 prepared and documented from 2000 through 2005?

3 "A. Absolutely not.

4 "Q. Please explain to us what some of the differences were?

5 "A. Number one, the difference with the round-robin transaction
6 is that Refco was a customer. Refco was the one who was moving
7 the funds, not the customers.

8 Two, it involved stock purchase agreements. There
9 were no stock purchase agreements in this transaction.

10 Three, there were tax shelters involved as opposed to
11 paying down loans and paying down receivables.

12 And Ingram Micro was also -- CIM was part of the
13 Ingram Micro family, as opposed to being an outside -- you
14 know, outside party.

15 So they're completely different. One is completely,
16 completely different than the other one.

17 "Q. Let me ask you, Mr. Maggio, in connection with the tax
18 shelter transactions, was Refco Group Holdings, Inc. involved
19 in those transactions in any way, shape or form?

20 "A. No, sir.

21 "Q. Mr. Maggio, those tax shelter transactions, what was the
22 duration of those tax shelter transactions?

23 "A. It can last anywhere from a year to five years.

24 "Q. What was the duration of the transactions that Mr. Collins
25 documented for you in connection with the round-robins?

CAFPCOL4

"Maggio" - redirect

1 "A. From five days to 15 days.

2 "Q. Mr. Maggio, in connection with the tax shelters, were there
3 guarantees involved?

4 "A. I don't recall. I don't think so.

5 "Q. Mr. --

6 "A. I don't think so.

7 "Q. Mr. Maggio, in connection with the tax shelters, did Refco
8 have any risk in those transactions?

9 "A. Yes, there was some risk, but it was minimal.

10 "Q. Why was it minimal, Mr. Maggio?

11 "A. It was minimal because there was paperwork, and there was
12 procedures in place to make certain that we would be able to,
13 you know, seize funds in case of any default by any party.

14 "Q. In fact, you participated in negotiating those tax shelter
15 transactions, correct?

16 "A. Yes.

17 "Q. Was it your concern to make sure that Refco had no risk in
18 those transactions?

19 "A. Yes.

20 "Q. Now, Mr. Maggio, in connection with the round-robin
21 transactions, did Refco have risk?

22 "A. No. Actually, Refco was a beneficiary. It had no risk
23 whatsoever.

24 "Q. Did the customer have any risk?

25 "A. Well, the customer had risk until such time that paperwork

CAFPCOL4

"Maggio" - redirect

1 was put into place to make certain that they did not have any
2 risk.

3 "Q. All right. Mr. Maggio, I'm sorry. I might have confused
4 you.

5 "A. Okay.

6 "Q. In connection with the round-robins, Mr. Maggio, did the
7 customers have risk in connection with the round-robins from
8 2000 to 2005?

9 "A. No.

10 "Q. Why didn't they have any risk in those transactions from
11 2000 to 2005?

12 "A. Because Refco Group gave indemnifications and guarantees to
13 eliminate all risks for the customer.

14 "Q. Who was loaning the money in connection with the
15 round-robins?

16 "A. Refco Group is lending the money to the customer in the
17 round-robin, starting the round-robin.

18 "Q. As compared to the customer, who had risk in the
19 round-robins?

20 "A. Excuse me?

21 "Q. As compared with the customer, who bore the risk in the
22 round-robins?

23 "A. Refco.

24 "Q. In connection with the tax shelters, Mr. Maggio, who bore
25 the risk in the tax shelters?

CAFPCOL4

"Maggio" - redirect

1 "A. Ingram.

2 "Q. Not Refco, correct?

3 "A. Not Refco.

4 "Q. Mr. Maggio, were there any other ways in which the tax
5 shelters were different from the round-robin transactions?

6 "A. Well, there was no involvement of receivables being paid
7 down. I believe CIM was part of the consolidating financials
8 of Ingram Micro, and CIM was the counterparty in this
9 transaction. Those were what was different.

10 "Q. Mr. Maggio, counsel asked you during cross-examination
11 whether you lied to a gentleman named Rick Acasa. Do you
12 recall that?

13 "A. Yes.

14 "Q. He asked you whether you lied to the NASD and the IRS. Do
15 you remember that?

16 "A. Yes.

17 "Q. Counsel also asked you whether you lied to the United
18 States Attorney's Office. Do you remember that?

19 "A. Yes.

20 "Q. I think as you indicated on direct examination, you had
21 lied to the U.S. Attorney's Office; is that right?

22 "A. In connection, prior to October 2005, yes.

23 "Q. Right. So to be clear. When was it that you lied to the
24 United States Attorney's Office?

25 "A. I lied to the U.S. Attorney's Office in the first meeting

CAFPCOL4

"Maggio" - redirect

1 that we had regarding the investigation of Sedona, which I
2 believe was 2004.

3 "Q. Mr. Maggio, that session that you had with the U.S.
4 Attorney's Office, where you lied about Sedona, that was before
5 the blowup of Refco; is that correct?

6 "A. Yes.

7 "Q. You started meeting with the government on October 10, as
8 the company Refco was blowing up, right?

9 "A. Yes.

10 "Q. That was October 10th, 2005; is that right?

11 "A. Yes.

12 "Q. That was October 10th, 2005; is that right?

13 "A. Yes.

14 "Q. How many times have you met with the government since
15 October 10th, 2005?

16 "A. Several. Many, many times.

17 "Q. And you lied once in those meetings with the U.S.
18 Attorney's Office -- I'm sorry.

19 And have you lied once in those meetings with the U.S.
20 Attorney's Office?

21 "A. No.

22 "Q. Mr. Maggio, in all of those meetings that you had with the
23 U.S. Attorney's Office after October 10th, 2005, did you ever
24 tell the U.S. Attorney's Office that Mr. Collins knew about
25 interest rate manipulation at Refco?

CAFPCOL4

"Maggio" - redirect

1 "A. No.

2 "Q. Did you ever tell them that Mr. Collins knew about boxes?

3 "A. No.

4 "Q. Did you ever tell them -- tell the U.S. Attorney's Office
5 that Mr. Collins knew about the false pledging of assets?

6 "A. No.

7 "Q. Did you ever tell the government that Mr. Collins knew
8 anything about Refco Mortgage Securities, Inc.?

9 "A. No.

10 "Q. Did you ever tell the government that Mr. Collins knew
11 anything about Phillip Morris stock?

12 "A. No.

13 "Q. Did you ever tell them that Mr. Collins knew anything about
14 the PanAm stock?

15 "A. No.

16 "Q. Sham foreign exchange transactions?

17 "A. No.

18 "Q. Sham treasury actions?

19 "A. No.

20 "Q. Customer losses like Trader Marine and Niederhoffer?

21 "A. No.

22 "Q. Did you ever tell them that Mr. Collins knew about the
23 BAWAG round-robins?

24 "A. No.

25 "Q. Did you ever tell the U.S. Attorney's Office that you had a

CAFPCOL4

"Maggio" - redirect

1 conversation with Mr. Collins about the hole?

2 "A. No.

3 "Q. What were the only things that you told the U.S. Attorney's
4 Office about Mr. Collins that you knew about an involvement in
5 the fraud?

6 "A. One, that the CFTC -- I told him that the statement that I
7 gave, the Manufacturer's statement and the statement that the
8 FCM got were completely different.

9 I told him in 2004 that this company, that Refco was
10 basically a piece-of-shit firm and that it was a house of
11 mirrors, and that if I had to go to my own attorney, there
12 would be consequences.

13 The round-trip loans, I told him to -- well, I didn't
14 tell him personally, but I directed David Weaver to draft the
15 documents as related to the round-trip loans.

16 "Q. Mr. Maggio, regarding the --

17 "A. Excuse me, sir.

18 "Q. Oh, sure.

19 "A. And Sedona, I told him allowed the client to sell stock
20 illegally.

21 (Continued on next page)

Cafdc015

"Maggio - redirect

1 "Q Mr. Maggio, counsel asked some questions about the first
2 time that you spoke to the government about Mr. Collins.

3 "Do you recall those questions?

4 "A Yes.

5 "Q Mr. Maggio, do you recall the first time that you told the
6 United States Attorney's office about Mayer Brown's involvement
7 in the round robin transactions?

8 "A No.

9 "Q Mr. Maggio, I am now showing you what's been marked as
10 Government Exhibit 3501-9.

11 "If you could look at the flagged page, Mr. Maggio?

12 "A Yes, sir.

13 "Q Having looked at that document, Mr. Maggio, does that
14 refresh your recollection as to the date on which you first
15 mentioned to the government that Mayer Brown's firm's
16 involvement in the round-robin transactions?

17 "A Yes.

18 "Q What was the date on which you first told the government
19 about Mayer Brown's involvement in the round-robin
20 transactions?

21 "A October 10, 2005.

22 "Q On October 10, 2005, what was happening on that day?

23 "A That was the first day I was there to cooperate with the
24 U.S. Attorney's Office.

25 "Q Very first meeting, Mr. Maggio?

Cafdc015

"Maggio - redirect

1 "A Yes, sir.

2 "Q Now, Mr. Maggio, counsel asked you some questions about
3 Sedona towards the end of the cross-examination this afternoon.

4 "Do you remember those questions?

5 "A Yes.

6 "Q He asked you certain questions about conflicts of interest
7 and that kind of thing.

8 "Do you remember that?

9 "A Yes.

10 "Q Now, Mr. Maggio, you testified that in 2003 you spoke to
11 Mr. Collins and talked to him about the condition of Refco and
12 your interest in having him represent both you and the company.

13 "Do you recall that?

14 "A Yes.

15 "Q Now, Mr. Maggio, at the time that you met with Mr. Collins,
16 did you know Refco was engaged in a massive fraud?

17 "A Yes.

18 "Q Did you know about the income padding and the revenue
19 manipulation and the round-robin transactions?

20 "A Yes.

21 "Q You knew about an awful lot of wrong conduct at Refco,
22 right?

23 A. Yes.

24 "Q And at that time with that information you could have
25 pursued an interest different from the company's, right?

Cafdc015

"Maggio - redirect

1 "A Yes.

2 "Q You could have ratted out Mr. Bennett, correct?

3 "A Yes.

4 "Q You could have ratted out Mr. Trosten, correct?

5 "A Yes.

6 "Q You could have ratted out the whole firm, right?

7 "A Yes.

8 "Q And at that time you were the subject of an investigation
9 with the SEC, is that right?

10 "A Yes.

11 "Q And, Mr. Maggio, during that time did Mr. Collins ever tell
12 you or anyone with the Mayer Brown firm ever tell you that you
13 had an interest that was against the interests of Refco?

14 "A No.

15 "Q Did they ever tell you that you could be a witness against
16 Refco?

17 "A No.

18 "Q In fact, what was the conclusion that Wilmer Cutler
19 Pickering had about your status and your interests vis-a-vis
20 Refco?

21 "A I was told that I needed to get my own counsel and that our
22 interests were now separating.

23 "Q That was Wilmer Cutler's conclusion, right?

24 "A That was Wilmer Cutler's conclusion, yes.

25 "Q And, Mr. Maggio, you had different interests at the time

Cafdc015

"Maggio - redirect

1 because you knew your firm was engaged in a fraud, correct?

2 "A That's right.

3 Q. And you could rat that firm out, correct?

4 "A Yes.

5 "Q And instead of having Wilmer Cutler represent you,
6 Mr. Maggio, you had Mr. Collins represent you, isn't that
7 right?

8 "A Yes, sir.

9 "Q And he never told you you had a separate interest, that you
10 could rat out the firm, isn't that right?

11 "A That's correct.

12 "Q And, Mr. Maggio, when you spoke to Mr. Collins, remind us,
13 what is it that you told him in that conversation in 2003?

14 "A The first or second one, sir?

15 "Q The one that has made the attorneys use bad words from time
16 to time.

17 "A I guess I'm allowed to. Basically I spoke to Joe and I
18 said, listen, Joe, I spoke to Phil and I'm asking you if only
19 here or -- to represent us because if I have to go to my
20 attorney, then all hell will break loose. I'm going to tell
21 you all, everybody is going to know what kind of piece of shit
22 firm this is and this is nothing more than a house of mirrors
23 and that there will be consequences. And he paused and he
24 says, I'll represent you. We'll get through this.

25 "Q And just to be absolutely clear, Mr. Maggio, you had this

Cafdc015

"Maggio - redirect

1 conversation before you were ever charged with anything by the
2 SEC, correct?

3 "A In June of 2003.

4 "Q And that was before you were charged with anything by the
5 SEC, is that correct?

6 "A Yes.

7 "Q And Mr. Collins never told you that you had an interest
8 separate from that of the company, is that right?

9 "A Never.

10 "Q Mr. Maggio, going back to your meetings with the U.S.
11 Attorney's Office, just to be clear, when you first met with
12 the government, I think you testified on cross-examination --
13 this is after the blowup -- that you tried to tell them, the
14 government, the entire scope of the fraud. Do you remember
15 saying that?

16 "A Well, I think I said there was first an educational
17 process, and then I tried to give them, you know, the scope of
18 the fraud without getting into a lot of the exact details of
19 how that took place.

20 "Q So when you said the entire scope of the fraud, Mr. Maggio,
21 did you tell the government everything you knew about the fraud
22 in that first meeting?

23 "A No.

24 "Q Could you possibly have told them everything you knew about
25 the fraud in that first meeting?

Cafdc015

"Maggio - redirect

1 "A No.

2 "Q And you didn't get an opportunity to get down to the
3 details until later, is that right?

4 "A That's correct.

5 "Q But you did in that first meeting with the government
6 mention Mayer Brown's involvement in round robins, isn't that
7 right?

8 "A Yes.

9 "Q Mr. Maggio, going back to your 1993 deposition, prior to
10 your 1993 deposition, you committed various crimes in
11 connection with your financial services firms, right?

12 "A Yes.

13 "Q And then in 1993 you committed perjury, right?

14 "A At the deposition, yes.

15 "Q And I think you testified that you were uncomfortable going
16 into that deposition, is that right?

17 "A Uncomfortable is an understatement.

18 "Q How is it that a man who committed so many frauds in
19 connection with financial services firms historically could
20 feel uncomfortable in 1993 going into that deposition when
21 you'd lied in the past?

22 "A Because this is the first time regulators are looking at
23 me. This is the first time my career is on the line. This is
24 the first time I may be caught for something. So to me I was
25 petrified.

Cafdc015

"Maggio - redirect

1 "Q And is that why you raised your concerns with Mr. Bennett?

2 "A Yes.

3 "Q Mr. Maggio, showing you what's been marked as Government
4 Exhibit 3501-54."

5 And if we could please pull that up.

6 "Mr. Maggio, what is 3501-54?

7 "A It's -- it's an agreement with myself regarding the
8 forfeiture and regarding the cooperation. I guess it's a
9 cooperation agreement, and also includes the forfeiture
10 agreement and what I agreed to plead to.

11 "Q And, Mr. Maggio, if you could just turn to page 3 of the
12 document.

13 "A Yes, sir.

14 "Q And if you could just look at the middle paragraph. What
15 does this paragraph set forth, Mr. Maggio?

16 "A Sets up the parameters of the cooperation agreement.

17 "Q And according to this agreement, Mr. Maggio, what does it
18 require you to do? What's the first thing it requires you to
19 do in this letter A?

20 "A 'shall truthfully and completely disclose all information
21 with respect to the activities of himself and others concerning
22 all matters about which this office inquires of him, which
23 information can be used for any purpose.'

24 "Q And, Mr. Maggio, looking at Subsection E, what else does
25 this require you to do, this cooperation agreement?

Cafdc015

"Maggio - redirect

1 "A 'Shall truthfully testify before the grand jury and at any
2 trial and other court proceeding with respect to any matters
3 about which this office may request his testimony.'

4 "Q Mr. Maggio, directing your attention to page 4 of the
5 document. Look at the last paragraph on that page.

6 "A Yes.

7 "Q Please read the first sentence of that paragraph.

8 "A 'It is understood that should the defendant commit any
9 further crimes or should it be determined that he has given
10 false, incomplete or misleading testimony or information, or
11 should he otherwise violate any provision of this agreement,
12 the defendant shall thereafter be subject to prosecution for
13 any federal criminal violation of which this office has
14 knowledge, including perjury and obstruction of justice.'

15 "Q And does that include your testimony in this proceeding,
16 Mr. Maggio?

17 "A Yes, sir.

18 "Q And if you could just turn quickly to page 5, Mr. Maggio.
19 The second paragraph reads: 'It is understood that in the
20 event it is determined that the defendant has committed any
21 further crimes, given false, incomplete or misleading testimony
22 or information or otherwise violated any provision of this
23 agreement (a) all statements by the defendant to this office or
24 other designated law enforcement agents and any testimony given
25 by the defendant before a grand jury or other tribunal, whether

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"Maggio - redirect

1 prior to or subsequent to the signing of this agreement, and
2 any leads will be admissible against defendant.'

3 "What is your understanding of what that means,
4 Mr. Maggio?

5 "A It means if I -- I mean, if I mess up, that the government
6 doesn't have to live up to the agreement, to the cooperation
7 agreement.

8 "Q And what happens to your cooperation agreement?

9 "A Goes out the window.

10 "Q And, Mr. Maggio, what does messing up mean?

11 "A Excuse me?

12 "Q What does messing up mean?

13 "A Mess up means to me to lie by giving false information,
14 giving wrongful information, lying, perjury.

15 "Q And, Mr. Maggio, is it your understanding that you need to
16 do anything in particular other than tell the truth during your
17 testimony at this proceeding?

18 "A Yes, sir.

19 "Q Is it your understanding you don't need to do anything else
20 but tell the truth during this proceeding?

21 "A Sir, all I have to do is tell the truth.

22 "Q Mr. Maggio, do you understand or do you believe that you
23 provided substantial assistance to the government so far?

24 "A Yes, I did, sir.

25 "Q Prior to your testimony what assistance have you provided?

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"Maggio - redirect

1 "A I have given information and evidence that has led to the
2 conviction of three people -- the president, the CEO and the
3 CFO of Refco. I have given information regarding the Austrian
4 bank BAWAG, which has -- which the trustee was able or the
5 government was able to get hundreds of millions of dollars back
6 for the settlement for the victims. I have given information
7 about tax shelters that Refco -- Refco was involved in and the
8 people who were behind the tax shelters and the promoters and
9 even some of the -- some of the clients. So I believe I've
10 given a lot of information and a lot of assistance so far.

11 "Q Now, Mr. Maggio, counsel ended his cross-examination by
12 asking you about your boat, is that right?

13 "A Yes.

14 "Q And what's the name of that boat?

15 "A Starting Over. It's the name that I used when I got
16 divorced in 1989 and I bought a new boat at the time -- excuse
17 me, 1982. And the name of -- the boat's name was Starting
18 Over. My wife bought a boat and my ex-wife bought a boat, and
19 she called it Free Again, so that's the name I used and that's
20 the name I kept on my subsequent boats over the years. So I've
21 used that name as the name of the company.

22 "Q And, Mr. Maggio, your intention with that boat with regard
23 to that boat is to actually work on a business?

24 "A Yes, sir.

25 "Q Nothing wrong with that, Mr. Maggio, right, sir?

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"Maggio - redirect

1 "A No, sir.

2 "Q And, Mr. Maggio, let me ask you a question. If you lie
3 here today, or if you've lied to the government and your
4 cooperation agreement gets ripped up, what's your understanding
5 about what's going to happen with that boat?

6 "A It would -- it would be sold or sunk or something, but I
7 certainly wouldn't be using it.

8 "Q No further questions."

9 THE COURT: Recross, counsel.

10 MR. SCHWARTZ: Very brief, your Honor.

11 THE COURT: Promises, promises.

12 MR. SCHWARTZ: (Reading)

13 "Q Counsel just asked you some questions about your first
14 meeting with the U.S. Attorney's Office back in October 2005,
15 right?

16 "A Yes.

17 "Q And you told the government at that meeting that Mayer
18 Brown had prepared some of the documents for the loans, right?

19 "A Yes.

20 "Q Lots of people knew that Mayer Brown prepared those
21 documents, right?

22 "A Lots of people knew that they prepared those documents?

23 "Q Yes.

24 "A No. The customers did.

25 "Q Every customer, right?

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"Maggio - recross

1 "A Every -- the limited number of customers that did those
2 transactions did.

3 "Q Those customers had attorneys, right?

4 "A Yes.

5 "Q Customers had accountants, right?

6 "A Some of them, yes.

7 "Q And those documents were given to those customers, right?

8 "A Yes.

9 "Q And the question at that first meeting with the U.S.

10 Attorney's Office was not who documented the loans but who knew
11 about the triangulation, right?

12 "A No, sir. I don't remember what the question was.

13 "Q Well, let me show you -- do you still have 3501 --

14 "A Yes, I do.

15 "Q -- dash 9 in front of you?

16 I'd ask you to turn to page 4. At that meeting, sir,
17 you were asked a number of questions about who knew about the
18 triangulation, right?

19 "A I don't know if this was a -- I don't know exactly what the
20 question was.

21 "Q Well, the word triangulation was used, right?

22 "A Yes.

23 "Q Triangle has three sides, right?

24 "A Yes.

25 "Q And what they wanted to know was who knew about the third

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"Maggio - recross

1 leg, who was covering up -- who knew that these loans were
2 being used to cover up Refco's hole, right?

3 "A Yes, but I didn't give all the names.

4 "Q That was the fraud they were asking about, right?

5 "A Sir, there were other names that were given that knew of it
6 but I didn't give all the names. David Weaver knew it.

7 Steve --

8 "Q Sir, just answer my question.

9 "A Yes, sir.

10 "Q You told them Rob Trosten knew about it, right?

11 "A Yes.

12 "Q You told them Fred Mutterer knew about it, right?

13 "A Yes.

14 "Q You told them Phil knew about it, right?

15 "A Yes.

16 "Q And you told them separately in this meeting that Mayer
17 Brown had done the documents, right?

18 "A Yes.

19 "Q But you never told them that Joe Collins knew about the
20 triangulation?

21 "A Sir, they didn't ask me. I didn't tell them. All I kept
22 on telling them was what I knew and gave bits and pieces and --
23 but there were other people who knew that I didn't tell them
24 either.

25 "Q Thank you, Mr. Maggio."

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"Maggio - recross

MR. SCHWARTZ: And thank you, Inspector Clark.

If I raised my voice, it was not at you.

THE COURT: Redirect, counsel.

MR. IMPERATORE: (Reading).

"Q Mr. Maggio, you recall whether the specific question asked of you was whether or not Lee specifically knew about the triangulation as opposed to anybody else, do you recall?

"A Yes. Yes, because -- yes. Yes.

"Q And, Mr. Maggio, you mentioned that other people knew about the existence of the hole that you didn't mention in this proffer, is that correct?

"A That's correct.

"Q Did Tone Grant know about the hole?

"A Yes."

MR. IMPERATORE: No further questions.

THE COURT: All right. Ladies and gentlemen, we have finished the testimony of Mr. Maggio.

I know. I think it's time for a break. And we will do the usual five or ten minutes.

Would you follow the usual rules, please. We'll see you with a live witness shortly. The same rules. Don't discuss the case or do any research. I'll see you in a minute.

Thank you for your wonderful attention.

(Continued on next page)

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1 (Jury not present)

2 THE COURT: Anything else on the record, counsel?

3 MR. IMPERATORE: Not from the government, your Honor.

4 MR. SCHWARTZ: No, your Honor.

5 THE COURT: All right. Off the record.

6 (Discussion off the record)

7 (Recess)

8 (Jury not present)

9 THE COURT: May we bring the jurors in, friends?

10 MR. CHERNOFF: Yes, your Honor.

11 Will we push all the way through to 5?

12 THE COURT: Yes, or to five of 5. I have a call to
13 take.

14 (Continued on next page)

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1 (Jury present)

2 THE COURT: Welcome back, ladies and gentlemen. I
3 hope you enjoyed your snacks. This is not our normal practice
4 to do this in the middle of the day, but we thought it would
5 help you with the testimony that was being read. And we
6 appreciate your wonderful attention.

7 A JUROR: Thank you.

8 THE COURT: And won't you be seated.

9 Mr. Chernoff.

10 MR. CHERNOFF: Your Honor, the next witness is on the
11 stand, but before I call upon him, may the government offer two
12 fact stipulations between the parties?

13 THE COURT: Yes, sir.

14 Ladies and gentlemen, you will recall that
15 stipulations are evidence for your consideration, and as to
16 these you must consider the facts that are set out in the
17 stipulations as true.

18 Sir.

19 MR. CHERNOFF: Your Honor, the Government Exhibit
20 1701S is a stipulation between the parties. It refers to a
21 number of exhibits which are documents. I will not list those
22 at this time, although the parties will refer to them where
23 relevant during the balance of the trial.

24 It reads that these government exhibits, quote, are
25 true, accurate, and authentic copies of documents that were,

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1 one, made at or near the time of occurrence of the matters set
2 forth by, or from information transmitted by, a person with
3 knowledge of those matters; two, kept in the course of
4 regularly conducted business activity; and, three, received
5 and/or made as part of the regular practice of that business
6 activity of one or more of the following companies: Refco,
7 Inc; Refco Group Holdings, Inc. (RGHI); Bank Fur Arbeit Und
8 Wirtschaft Und Osterreichische Postparkasse -- and the last
9 word I can't say -- (BAWAG), Paris Bank and/or JPMorgan Chase &
10 Company.

11 Your Honor, the government offers 1701S.

12 THE COURT: Received.

13 (Government's Exhibit 1701S received in evidence)

14 MR. CHERNOFF: The next fact stipulation between the
15 parties, your Honor, Government Exhibit 300S, lists a number of
16 exhibits which I will not read out at this time.

17 It states that the parties have agreed that, quote,
18 The handwriting contained in the following exhibits belongs to
19 Joseph P. Collins, the defendant.

20 And the government offers 300S.

21 THE COURT: Received.

22 (Government's Exhibit 300S received in evidence)

23 MR. CHERNOFF: Your Honor, the government calls Robert
24 Trosten.

25 THE CLERK: Sir, will you please stand and raise your

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1 right hand.

2 ROBERT TROSTEN,

3 called as a witness by the government,

4 having been duly sworn, testified as follows:

5 THE CLERK: Please be seated.

6 State your full name and spell your last name slowly
7 for the record.

8 THE WITNESS: My name is Robert Trosten. That's
9 T-r-o-s, as in Sam, t-e-n.

10 MR. CHERNOFF: May I inquire, your Honor?

11 DIRECT EXAMINATION

12 BY MR. CHERNOFF:

13 Q. Mr. Trosten, how old are you?

14 A. I'm 43 years old.

15 Q. One more time.

16 A. I'm 43.

17 Q. Where did you grow up, sir?

18 A. I grew up on Long Island.

19 Q. Did you go to high school out there?

20 A. I did. I went to high school in Plainview.

21 Q. What high school did you attend?

22 A. John F. Kennedy High School.

23 Q. Did you go to college?

24 A. I did.

25 Q. Where did you attend college?

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Trosten - direct

1 A. I attended college at the State University of New York at
2 Albany.

3 Q. And what did you major in at SUNY Albany?

4 A. I majored in accounting.

5 Q. Where do you currently live?

6 A. I live in Bradenton, Florida.

7 Q. And are you working now?

8 A. I am.

9 Q. How do you work?

10 A. I am a financial consultant for a vitamin supplement
11 company out on Long Island, and I am a partial owner in a
12 restaurant in Sarasota, Florida.

13 Q. Mr. Trosten, are you a defendant in a criminal case here in
14 this courthouse?

15 A. I am.

16 Q. And have you pled guilty to several federal crimes?

17 A. I have.

18 Q. What were they?

19 A. Conspiracy to commit securities fraud, securities fraud,
20 bank fraud, wire fraud, and money laundering.

21 Q. Mr. Trosten, when did you commit those crimes that you've
22 pled guilty to?

23 A. I committed those crimes during my tenure at Refco between
24 1997 and 2004.

25 Q. Did you commit those crimes with other people?

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Trosten - direct

1 A. I did.

2 Q. When you pled guilty, did you enter into any kind of plea
3 agreement with the United States government?

4 A. I did.

5 Q. And is that a written agreement?

6 A. Yes, it is.

7 Q. Is it known as a cooperation agreement?

8 A. Yes, it is.

9 Q. What does the cooperation agreement, in short, require you
10 to do?

11 A. It requires me to tell the truth, testify when called upon,
12 and commit no further crimes.

13 Q. What benefit do you receive from upholding your end of the
14 cooperation agreement?

15 A. If I uphold my end of the agreement, the government is
16 required to write a letter to my sentencing judge, which may be
17 her Honor, advising of what I have done since I've pled guilty
18 to those crimes, and her Honor may substantially deviate from
19 the sentence that I pled guilty to.

20 Q. Are you testifying here today pursuant to that cooperation
21 agreement?

22 A. Yes, I am.

23 Q. Have you testified as a government witness in other
24 proceedings?

25 A. Yes, I have.

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1 Q. And can you be called as a witness in further proceedings
2 like this one in the future?

3 A. Yes, I could.

4 Q. Mr. Trosten, as a result of your guilty plea, did you
5 forfeit over \$40 million in cash to the United States
6 government?

7 A. Yes, I did.

8 Q. As well as several homes and cars?

9 A. I did.

10 Q. And, Mr. Trosten, you have not yet been sentenced, correct?

11 A. No, I have not.

12 Q. And you are facing at the time of your sentence potential
13 time in prison, correct?

14 A. Yes.

15 Q. When you left Refco in 2004, what was your position with
16 the company?

17 A. I was the Executive Vice President and Chief Financial
18 Officer.

19 Q. What is a chief financial officer?

20 A. The chief financial officer is the highest ranking official
21 at the company in charge of all the finance.

22 Q. And as Chief Financial Officer, or CFO, who, Mr. Trosten,
23 who did you report to?

24 A. I reported to the President and Chief Executive Officer,
25 Phillip Bennett.

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1 Q. And who was your predecessor as CFO of Refco?

2 A. That was Phil Bennett as well.

3 Q. Was he serving as both CFO and CEO at that time?

4 A. Yes, he was.

5 Q. Mr. Trosten, did you commit crimes with Phillip Bennett?

6 A. Yes, I did.

7 Q. And when you were working for Phil Bennett at Refco, did
8 you work with a particular lawyer?

9 A. I did.

10 Q. Who was that?

11 A. I worked with Joe Collins.

12 Q. How regularly did you interact with Joe Collins when you
13 worked at Refco?

14 A. Anywhere from zero to several times a day.

15 Q. And over how many years did you work with Joe Collins?

16 A. I worked with Joe less frequently when I started with the
17 firm in '97 and more frequently as I became -- as my
18 responsibility increased to Chief Financial Officer.

19 Q. Could you look around the courtroom and tell me if you see
20 Mr. Collins here?

21 MR. SCHWARTZ: I concede the identification, your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. CHERNOFF: Thank you, Mr. Schwartz.

25 BY MR. CHERNOFF:

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1 Q. What, generally speaking, was Joe Collins' role in the
2 legal affairs of Refco?

3 A. He was our transactional lawyer, outside counsel. He would
4 work on a variety of issues as requested by senior management.

5 Q. Was Joe Collins a member of a law firm?

6 A. Yes, he was.

7 Q. Which law firm?

8 A. At the time it was called Mayer, Brown & Platt.

9 Q. Did that name change later on?

10 A. I believe it did, yes.

11 Q. Do you know why?

12 A. It merged with another firm and it was called Mayer, Brown,
13 Rowe & Maw.

14 Q. I'll just refer to the firm as Mayer Brown for the rest of
15 this examination.

16 A. Thank you.

17 Q. Did other lawyers at Mayer Brown assist Joe Collins in
18 representing Refco?

19 A. Yes.

20 Q. Can you estimate how many lawyers at Mayer Brown were
21 working on Refco matters during your tenure?

22 A. Several, maybe a dozen or so.

23 Q. And to your knowledge, over your time at Refco,
24 approximately how many different matters did Joe Collins work
25 on for Refco?

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Trosten - direct

1 A. Dozens of matters.

2 Q. Did you yourself assign legal work to Mr. Collins from time
3 to time?

4 A. I did.

5 Q. Why did you select Joe Collins as Refco's lawyer on those
6 matters?

7 A. Because Refco utilized Joe Collins for most, if not all, of
8 those matters.

9 Q. We're going to discuss some of those matters in detail
10 later in the examination. But I want to go through some events
11 chronologically starting with how it was you came to work at
12 Refco.

13 You said you had an accounting degree?

14 A. Yes.

15 Q. And when did you finish college with that degree?

16 A. 1991.

17 Q. What was your first job after graduating?

18 A. I was an auditor.

19 Q. Where did you work as an auditor?

20 A. I worked for a firm called Arthur Andersen, which was for
21 me working out of New York City.

22 Q. What is an auditor?

23 A. An auditor is someone that goes into another firm and
24 reviews their what we call books and records or financial data
25 to determine whether or not it is accurate.

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Trosten - direct

1 Q. What were some of the companies that you, working for
2 Arthur Andersen, conducted audits at?

3 A. I conducted audits at GTE, a company called TOTAL Oil, a
4 company called Turner Construction.

5 Q. And how long did you work for Arthur Andersen?

6 A. Two years.

7 Q. Where did you leave Arthur Andersen to work?

8 A. At a firm called Lehman Brothers.

9 Q. Why did you leave for Lehman Brothers?

10 A. I left because I was going to make more money.

11 Q. What position were you given at Lehman Brothers?

12 A. When I first got to Lehman Brothers, I was working in their
13 consolidation group.

14 Q. What, in short, is a consolidation group?

15 A. It's a group that takes financial information from several
16 different entities. As Lehman Brothers was a global firm,
17 those entities would submit their data to New York. We would
18 then review it, and we would do what we call consolidate the
19 information to the parent company.

20 Q. How many years did you work in this consolidation group
21 with Lehman Brothers?

22 A. Approximately four-and-a-half of my five years.

23 Q. At some point your job changed?

24 A. It did.

25 Q. What were you doing then at Lehman?

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1 A. I was working in the regulatory department at Lehman
2 Brothers.

3 Q. What does the regulatory department do?

4 A. Lehman Brothers had an entity that was regulated by the
5 Securities and Exchange Commission and we had to file reports
6 on a monthly basis, and I was responsible for a piece of that
7 report.

8 Q. And you said about six months into that you changed jobs
9 again?

10 A. I did.

11 Q. Where did you go to work at that point?

12 A. I went to work for a firm called Refco Group Limited.

13 Q. And remind us what year this was.

14 A. This was in 1997.

15 Q. How is it that you came to leave Lehman to join Refco in
16 1997?

17 A. A manager that I worked with indirectly at Lehman
18 Brothers -- his name is Steven Rossi -- he left to go to Refco
19 in approximately January of 2007 -- I'm sorry, January of 1997.
20 He had asked me to come over shortly thereafter, and I went to
21 work for him.

22 Q. And could you just spell Mr. Rossi's name for us?

23 A. Last name, R-o-s-s-i.

24 Q. So you said you left Lehman Brothers to follow Mr. Rossi to
25 Refco?

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1 A. That is correct.

2 Q. Why did you decide to change jobs at that point?

3 A. I thought I could learn a lot from Steven. I never worked
4 directly for him in the past, and I was getting a significant
5 increase in salary.

6 Q. What position were you offered at Refco?

7 A. Vice president of Consolidation and Financial Reporting.

8 Q. What was your starting salary?

9 A. My base salary was \$120,000, and I had a guaranteed minimum
10 bonus of 25,000.

11 Q. And what were the positions you held at Refco ranging from
12 your starting position to when you left -- when you finished as
13 CFO?

14 A. I started as vice president in charge of
15 consolidation/financial reporting. I later became a senior
16 vice president in charge of financial reporting and ultimately
17 became Executive Vice President and Chief Financial Officer.

18 Q. Were all these jobs in New York?

19 A. Yes, they were.

20 Q. Mr. Trosten, what was Refco?

21 A. Refco is a -- was a financial services firm.

22 Q. And what were its main sources of business?

23 A. Refco would transact business for clients that it had,
24 whether it be in different financial products, futures, foreign
25 exchange, bonds, both U.S. and foreign, and other financial

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1 products.

2 Q. Fair to say you conducted this business in markets around
3 the world?

4 A. Yes. We had a global base.

5 Q. At its peak, how large was the company, Refco?

6 A. At its peak, Refco, from the future side, was one of the
7 largest independent financial services firms in the world as it
8 related to clearing volume.

9 Q. And roughly how many offices did it have around the world?

10 A. Roughly 20-plus offices around the world.

11 Q. Was New York the headquarters at the time you worked there?

12 A. Yes, it was.

13 Q. Where had the company -- where had Refco started out?

14 A. Refco started out in Chicago.

15 Q. And, by the way, where was Joe Collins himself based?

16 A. He was based in Chicago.

17 Q. And did you know him to live in and around Chicago?

18 A. I did.

19 Q. Let me turn to the time that you started at Refco.

20 Did you have an understanding of who actually owned
21 the company?

22 A. Yes, I did.

23 Q. And who did own Refco at the time that you started?

24 A. Refco was owned by a company called Refco Group Holdings,
25 Inc.

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Trosten - direct

1 Q. And who in turn owned Refco Group Holdings, Inc.?

2 A. Refco Group Holdings, Inc. was owned by three people:

3 Thomas Dittmer owned 51 percent, Tone Grant owned 24.5 percent,
4 and Phillip Bennett owned 24.5 percent.

5 Q. And could you tell us a little bit about, first of all, who
6 Mr. Dittmer was?

7 A. Tom Dittmer was at some point the Chairman of the Board at
8 Refco. He had a relationship with -- some family relationship
9 with the founder of Refco, Ray Friedman. Tone Grant and Tom
10 was not particularly active at the company when I got there in
11 1997. Tone Grant was the President and Chief Executive Officer
12 of the firm when I got there in 1997. He was later phased out
13 of the business in approximately 1999/2000.

14 Phillip Bennett was the Chief Financial Officer when I
15 arrived with the firm and later moved up to President and Chief
16 Executive Officer and Chief Financial Officer and later gave
17 his position of chief financial officer to me.

18 MR. CHERNOFF: Let me ask, Mr. Smith, if we could
19 bring up Government Exhibit 8.

20 Your Honor, I'm going to offer Government 855 without
21 objection. So I will just ask that it be brought up now for
22 the witness.

23 THE COURT: Yes. Thank you.

24 Received, if it hasn't been.

25 (Government's Exhibit 855 received in evidence)

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Trosten - direct

1 BY MR. CHERNOFF:

2 Q. So, Mr. Trosten, would you just take a look at the
3 ownership structure chart that's up there.

4 Does that accurately capture the testimony you just
5 gave about the ownership?

6 A. At what point in 1999 does it refer?

7 Q. Is there a difference, did it change in '99?

8 A. I believe it did, yes.

9 Q. So let's just take it at the beginning of '99.

10 A. Yes, it is in the beginning of 1999.

11 Q. OK. And so we refer to Refco Group Holdings, Inc., and
12 that was known as RGHI within the company?

13 A. Yes, it was.

14 Q. All right. Phillip Bennett, the CEO, what was his
15 background, in short, whatever details you know about it, when
16 you came to Refco and arrived as the CEO?

17 A. Phillip Bennett worked at the time I believe it was Chase
18 Bank. He was involved in their credit, working at the bank,
19 and later joined Refco to work on a company called Refco
20 Capital, one of its subsidiaries, and later, prior to my
21 arrival, was promoted to Chief Financial Officer.

22 Q. And looking again at the ownership structure, RGHI, did
23 RGHI have any business operations of its own?

24 A. No.

25 Q. Did it have any employees?

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Trosten - direct

1 A. No.

2 Q. And so its main purpose was to own Refco on behalf of its
3 owners?

4 A. That is correct.

5 Q. You testified moments ago that Mr. Collins was an outside
6 lawyer for Refco. Did you ever work with any law firm or
7 lawyer who handled RGHI matters?

8 A. I did.

9 Q. Who was that, or who were they?

10 A. There was Joe Collins at Mayer Brown, and his associates.

11 Q. Sorry?

12 A. And his associates.

13 Q. Did you ever work with any other law firm for RGHI other
14 than Mayer Brown and Mr. Collins?

15 A. No.

16 MR. CHERNOFF: All right. We can take that down,
17 Mr. Smith. Thank you.

18 Q. You said that the ownership structure changed in 1999?

19 A. Yes, it did.

20 Q. What was the change?

21 A. An Austrian bank acquired 10 percent ownership interest in
22 Refco.

23 Q. And was that the bank BAWAG that you heard me trying to
24 read the name of?

25 A. Yes.

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Trosten - direct

1 Q. OK. We'll come back to that, but let me ask you a little
2 bit more at this time about your work at Refco.

3 You said you had a degree in accounting. And are you
4 also a Certified Public Accountant?

5 A. I am a Certified Public Accountant, not active.

6 Q. How many years, roughly, have you worked in accounting
7 during your life?

8 A. Well, accounting and finance, 15 years.

9 Q. You said that when you first -- when you first started out
10 at Refco -- well, let me back up.

11 What were your primary responsibilities in the first
12 job you took at Refco?

13 A. It was to aggregate or consolidate Refco's entities, which
14 were maybe 20-plus or so legal entities. Their controllers
15 would report their financial information to me, and I would
16 then consolidate it and present it to my management.

17 Q. OK. When we use the term "Refco," I am going to ask that
18 it be used to refer to Refco Group Limited. Is that how you
19 were using it?

20 A. Yes.

21 Q. Now, you said that Refco Group Limited had a number of
22 subsidiaries that reported up to it?

23 A. Yes.

24 Q. This term "consolidation" you referred to a couple of
25 times. Can you explain to us in short how consolidation works,

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1 what that accounting principle is?

2 A. When you consolidate to the reporting entity -- in this
3 case that would be Refco -- the goal is to combine all of the
4 entities together and then perform what we call eliminations
5 for any transactions that occur between the parties inside of
6 the reporting entity, being Refco.

7 Q. What do you mean when you say "eliminations"?

8 A. You would eliminate any activity that occurred between --
9 between two different entities. So if I was providing a
10 service for another legal entity and charged them \$100, for
11 example, I would have \$100 of revenue and the entity that I
12 provided the service to would have \$100 of cost. When we
13 consolidate, that entry would eliminate as if it never
14 happened; it would make it disappear.

15 Q. Which is how it is supposed to work within a consolidated
16 group?

17 A. Under generally accepted accounting principles, that's
18 correct.

19 Q. OK. Let me take that one more time.

20 You are talking about two subsidiaries in a
21 consolidated group having a transaction with each other?

22 A. Yes, I am.

23 Q. Could you give an example of any kind of a transaction
24 between two subsidiaries?

25 A. Yes. We had a -- we can have a subsidiary that lends money

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1 to other operating subsidiaries. To the extent that entity
2 number one lends \$10 to entity number two, entity number one is
3 going to have \$10 less cash and is going to have what we call
4 in accounting a receivable, monies that are owed to it. Entity
5 number two that received the money is going to have cash in
6 their bank account and is going to have a payable for the money
7 that I just lent it.

8 When we consolidate, that receivable and payable get
9 eliminated in consolidation and the cash is still the cash,
10 because it is still the same \$10 of cash in that example when
11 you consolidate. So that the cash doesn't get eliminated; it
12 is still within the group. But that receivable and payable
13 would get eliminated in consolidation.

14 Q. OK. You used an example involving debt. Could you give us
15 another example that involves a simple kind of transaction like
16 a sale or a service?

17 A. Sure. Let's use the example of rent. We have one legal
18 entity that would pay the rent on behalf of everyone else, and
19 it would charge them rent expense and allocate that rent
20 expense across all the entities that were utilizing the same
21 building.

22 So as the -- I've paid the rent. So I have a
23 reduction of my cash and I have rent expense. Now I'm going to
24 charge additional rent expense to every subsidiary and make
25 them owe me the money that I just paid for them. In

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1 elimination, I'm charging them rental income. They're being
2 charged rent expense. That income and expense would also be
3 eliminated in consolidation as well as any loans made to or
4 from to pay for that rent.

5 Q. OK. So the point of this elimination and consolidation is
6 to get a picture of how the whole consolidated group is doing?

7 A. Yes, with third parties.

8 Q. As opposed to having a set of books that just show
9 transactions within the consolidated group?

10 A. That is correct.

11 Q. OK. Now, you said that Refco had a bunch of subsidiaries
12 that you consolidated, that you eliminated transactions and
13 together consolidated the picture?

14 A. That's correct.

15 Q. And you were talking a moment ago about RGHI, another
16 company.

17 Did RGHI and Refco consolidate in Refco's accounting
18 practices?

19 A. Not for financial -- not for our financial reporting, no.

20 Q. And why was that?

21 A. RGHI was the holding company and Refco was the reporting
22 entity.

23 Q. What do you mean by "reporting entity"?

24 A. Refco would be the firm that got audited on an annual
25 basis. It would be the firm that would borrow money from third

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Trosten - direct

1 parties, and those financial statements would be distributed to
2 those third parties on an annual basis.

3 Q. And, Mr. Trosten, I would ask you if you could slide the
4 mic a little bit to this side. That way it will -- thank you.

5 OK. So you said that Refco got audited on an annual
6 basis. Do you mean audited by an auditing firm as opposed to
7 something like the IRS?

8 A. Yes, a third-party auditor.

9 Q. OK. Those audits were required?

10 A. They were required by the firms that lent Refco money as
11 part of their review of Refco's creditworthiness. They
12 required an annual financial statement.

13 Q. What is an annual financial statement?

14 A. An annual financial statement is several different
15 financial reports, footnotes to those reports, and they're done
16 as of a 12-month period, whether that be calendar year-end from
17 January to December, or any other period of time covering 12
18 months, which would be considered a fiscal year-end.

19 Q. So the financial statement is a statement that relates to
20 the end of the fiscal year?

21 A. As it related with respect to our audits, that's correct.

22 Q. And what was the fiscal year at Refco?

23 A. The fiscal year began March 1st of a particular year and
24 ended February 28th or 29th of the following year.

25 Q. Is there any reason why the fiscal year is different from a

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1 calendar year?

2 A. No.

3 Q. In other words, the company could select its fiscal year
4 for purposes of preparing its reports?

5 A. That is correct.

6 Q. And in order to produce this financial statement, you had
7 to do this consolidation, correct?

8 A. That is correct.

9 Q. In these required audits, why did Refco use outside
10 accountants as opposed to accountants on its own payroll?

11 A. It was required to have an independent audit report.

12 Q. Independent in what sense?

13 A. Refco would hire a group of accountants for them to come in
14 and independently look at our books and records to determine
15 whether or not they were accurate.

16 Q. And where did these outside accountants, the auditors, get
17 the information that they are using to review the company to do
18 the audit?

19 A. The auditors initially provide us with a list of reports
20 they would like us to provide to them. We provide it to them.
21 We then have any followups that they may ask and compile a
22 report.

23 Q. And after the audit is completed, what is it that the
24 auditors, the outside accountants, do in connection with the
25 company's financial statement?

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Trosten - direct

1 A. They prepare our financial statements in a booklet and they
2 issue an opinion as to those financial statements.

3 Q. What do you mean by an opinion with respect to the
4 financial statements?

5 A. Well, the job of the auditor is to go into a particular
6 company, in this case Refco; look at the financial data that we
7 had provided; where possible, independently verify balances; do
8 various testing on balances; and to the extent they are
9 comfortable that the books and records accurately reflect
10 Refco's financial position, they would issue what they call an
11 unqualified opinion.

12 Q. An unqualified opinion?

13 A. Yes, unqualified opinion.

14 Q. Is there some other kind of opinion they might issue?

15 A. Yes. It's called a qualified opinion.

16 Q. What are those and what's the difference?

17 A. An unqualified opinion means there's no disclaimer within
18 your financial statements. It will just say that your
19 financial statements in all, in every material respect,
20 accurately reflect the company's position as of a certain date.

21 A qualified opinion is as if to say an except-for
22 opinion. So it would say your books and records accurately
23 reflect the financial condition of Refco except for as noted,
24 and it would just explain why the opinion was qualified.

25 Q. And so, obviously, the goal here is to get the unqualified

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1 opinion?

2 A. That is correct.

3 Q. And when a company gets an unqualified opinion for its
4 financial statement, what does it do with that opinion?

5 A. Well, it uses those financial statements and provides them
6 to banks, investors, rating agencies, potentially customers, if
7 requested.

8 Q. And what do the banks and rating agencies, etc., do with
9 the financial statement and the unqualified opinion?

10 A. They utilize Refco's financial statements and our
11 unqualified opinion in reviewing Refco whether to determine to
12 continue to extend it credit, to renew credit, or to get into
13 any other potential deals where Refco is looking to borrow
14 money.

15 (Continued on next page)

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CAFPCOL6

Trosten - direct

1 BY MR. CHERNOFF:

2 Q. Now, Mr. Trosten, when you worked at Refco, were the
3 financial records of the company audited annually?

4 A. Yes, they were.

5 Q. Who prepared the audits during your time there?

6 A. Well, I, with my team, would aggregate the data, but in
7 terms of the physical book, it was Arthur Andersen from fiscal
8 year end. But from my time in 1997 and, I believe in fiscal
9 year end 2003, we changed to Grant Thornton.

10 Q. And why did you change at that time to Grant Thornton?

11 A. Arthur Andersen had gone out of business. The partner in
12 charge of the audit at Arthur Andersen left the firm and moved
13 to Grant Thornton, and the audit followed with him.

14 Q. And so you, yourself, were involved in, and later in charge
15 of, preparing the books and records for the outside auditors to
16 review?

17 A. That is correct.

18 Q. And during the years we've been talking about, did Refco
19 get clean, unqualified opinions concerning its financials?

20 A. Yes, we did.

21 Q. We were talking a moment ago about consolidation, and I
22 asked you a few questions about RGHI. Let me come back to
23 another accounting concept. Are you familiar with the term
24 related party?

25 A. Yes, I am.

CAFPCOL6

Trosten - direct

1 Q. What does that mean?

2 A. A related party is an entity or a person, from an
3 accounting perspective, that doesn't consolidate with the
4 reporting group, in this case Refco, but does have a
5 relationship with Refco.

6 Q. And what kind of relationship with Refco do you mean by
7 when you say related party has that kind of relationship?

8 A. Well, if Phil Bennett had a transaction with Refco, Phil
9 Bennett would be considered a related party because his
10 personal activity wouldn't consolidate within Refco, but
11 there's still a transaction between Refco and Phil Bennett.

12 Refco Group Holdings would be considered a related
13 party, as well as any transactions with Tom Dittmer or Tone
14 Grant, for example.

15 Q. You said before that Refco and RGHI did not consolidate?

16 A. Not for financial reporting purposes, no, they do not.

17 Q. So when you consolidated the books and records, did money
18 that RGHI might have owed Refco eliminate?

19 A. No, it would not.

20 Q. Because it was not part of the consolidated Refco Group?

21 A. That is correct.

22 Q. Okay. So if RGHI owed Refco money, would that appear
23 someplace on Refco's audited financial statement?

24 A. Yes, it would.

25 Q. How and where would that appear?

CAFPCOL6

Trosten - direct

1 A. It would show up on the balance sheet as a receivable.
2 Whether it would show up saying receivable from related party
3 or just embedded in our receivables, it would show up on the
4 balance sheet as an asset under receivables.

5 Q. What does the term "receivable" mean?

6 A. A receivable is when there is monies that are owed to you
7 either through borrowings, through services rendered, or
8 through other matters that an entity or an individual owes you
9 money.

10 Q. And so you said that a debt from RGHI to Refco would appear
11 in the financial statement in -- Does it also appear in the
12 footnotes, did you say?

13 A. To the extent that it was not outwardly noted on the face
14 of the financial statement or on the balance sheet as a
15 separate line item, which Refco was not, it would show up on
16 what was called a footnote disclosure within the financial
17 statements.

18 Q. That's what I wanted to ask. First of all, what is a
19 footnote disclosure?

20 A. Footnotes are required under generally accepted accounting
21 principles and generally accepted auditing standards. They are
22 known to be an integral part of the financial statements, and
23 they provide more insight into the financial statements that
24 the reader will then utilize to then make business decisions.

25 Q. And so how, if at all, does related-party debt appear in

CAFPCOL6

Trosten - direct

1 the footnotes of a financial statement?

2 A. It would appear, whether it be Item No. 1 or Item No. 10.

3 Somewhere within your footnote disclosures, you'd have a
4 related-party footnote, which would describe the balance
5 between Refco and any related parties.

6 Q. Now, in your experience working on audits, are there
7 related-party transactions that are common?

8 A. Yes.

9 Q. Give some examples, please?

10 A. The company could lend money to the owners and they don't
11 want to take it as a distribution; so they just take it as a
12 loan.

13 Conversely, the partners may deem it necessary to
14 contribute more money, but don't want to do it in the form of a
15 contribution of capital. So they would lend money to the
16 entity with the expectation of getting paid back at a later
17 date.

18 Q. And so it's fairly normal for related parties to borrow
19 from each other?

20 A. Yes.

21 Q. Now, does the size of a related-party debt matter to
22 auditors?

23 A. It does.

24 Q. Why?

25 A. Because related-party debt gets more scrutiny from an

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Trosten - direct

1 auditor than does third-party debt.

2 Q. Why does it get more scrutiny?

3 A. It gets more scrutiny because to the extent a third party
4 doesn't repay its obligation, you've got legal rights to sue
5 and to go after that third party.

6 With a related party, you still have the same rights
7 to go after and sue that related party, but you may be less
8 likely to do so. So the auditors are more sensitive to
9 collectibility as it relates to a related party than they are
10 third party.

11 Q. Now, when you were working at Refco, did Refco's financial
12 statements disclose some debt from RGHI to Refco in the
13 footnotes?

14 A. Yes, it did.

15 Q. Some of the debt?

16 A. Some of it.

17 Q. And in the time that you worked at Refco, did your outside
18 auditors, Arthur Andersen, express concern about the size of
19 the RGHI debt, even the size that was being reported?

20 A. Yes, they did.

21 Q. How was that concern conveyed to you?

22 A. It was conveyed to me that Refco's related-party
23 receivable, which was reported in excess of \$200 million, was
24 approximately the size of Refco's net worth, which is its
25 assets or monies owed to it, plus its liabilities or money that

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1 would -- Refco would owe. And to the extent that that
2 receivable was not collectible, Refco would have no net worth.

3 Q. And so what was Arthur Andersen's reaction upon reviewing
4 the books and seeing the size of this RGHI debt that was the
5 same as the net worth of Refco?

6 A. They had asked Phil Bennett as to how he planned to pay it
7 off and required that they pay it off -- that Refco pay it off
8 within a certain period of time.

9 Q. And did Mr. Bennett say he had a plan to pay it off?

10 A. The first time it came up, I don't recall what he had said.
11 The next year, it came up because the balance actually grew,
12 and the auditors wanted it paid down in, I believe it was,
13 approximately a three-year period of time. And Phil had
14 offered more of a seven to eight-year period of time to repay
15 it through dividends or distributions.

16 Q. And did you have an understanding as to what the auditors
17 could do if they weren't satisfied with Refco's paying down of
18 this debt from RGHI?

19 A. They could have looked to determine whether Refco Group
20 Holdings, or RGHI, had the wherewithal and the ability to pay.
21 And to the extent it didn't, Refco would then have a receivable
22 on its books that would be deemed uncollectible, and the
23 auditors would write it off our books; so we'd reduce the
24 receivable and we'd reduce our net worth.

25 Q. Mr. Trosten, did there come a time when you learned that,

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Trosten - direct

1 in fact, RGHI owed Refco far more money than Refco was
2 reporting to its auditors?

3 A. Yes, I did.

4 Q. How did you first start to uncover that?

5 A. It was approximately May or so of 1998, and I was asked by
6 my manager, Steve Rossi, to what we call roll forward or to
7 determine what the RGHI debt was to RGL as of May from
8 February, which was our fiscal year end.

9 And when I did that, I came up with a significantly
10 higher balance than what was reported.

11 Q. So what did you do when you came up with that significantly
12 higher balance?

13 A. I brought it to the attention of my manager, Steven Rossi,
14 and I explained to him that I'm having a difficult time
15 performing this task. I'm coming up with a much higher number
16 than what is being reported in the financial statements.

17 Q. So how did Mr. Rossi react?

18 A. He said he would take a look at my analysis.

19 Q. Did he tell you what he found in reviewing your analysis?

20 A. He said he had the same -- He did, and he said he had the
21 same questions I had, and he was going to talk to Phil Bennett.

22 Q. Did Mr. Rossi report back to you after he spoke to Phil
23 Bennett about this discrepancy?

24 A. Yes.

25 Q. And what did he say he had learned from Phil Bennett?

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1 A. Steve had told me that Phil Bennett advised him that at the
2 end of the -- toward the end of our fiscal year end, Phil
3 arranged for short-term pay-down of that debt that RGHI had
4 with Refco, and then that obligation would reverse back in
5 early March of 1998.

6 Q. And so did you have an understanding at that point how this
7 short-term pay-down would effect Refco's financial statements?

8 A. I did.

9 Q. How would it affect them?

10 A. It would move a portion, in this case, of the related-party
11 debt and make it appear like it was a third-party debt or
12 unrelated-party debt.

13 Q. Now, we were talking just a moment ago about related-party
14 debts. This money that RGHI owed Refco at that time was a
15 related-party debt?

16 A. Yes, it was.

17 Q. And, therefore, it should have been reported in the
18 footnotes for the financial statement that followed that,
19 closed that fiscal year?

20 A. Yes.

21 Q. Let me ask you. Do you have a folder of exhibits before
22 you, Mr. Trosten? And they should be roughly in the order I'm
23 going to be asking you about them. Could you look at the first
24 one which has been marked for identification as Government
25 Exhibit 6001?

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1 A. I have it.

2 Q. Do you recognize 6001?

3 A. I do.

4 Q. What do you recognize it to be?

5 A. This is Refco's audited financial statement for the fiscal
6 year ended February 28th, 1998.

7 MR. CHERNOFF: Your Honor, government offers 6001.

8 MR. SCHWARTZ: No objection.

9 THE COURT: Received.

10 (Government's Exhibit 6001 received in evidence)

11 Q. And you also have it there on the screen in front of you,
12 Mr. Trosten.

13 First of all, what can you tell from the first page of
14 this document?

15 A. Well, it's Refco's consolidated financial statements for
16 the period ended February 28, 1998.

17 Q. And so that's what you would call the end of fiscal year
18 1998?

19 A. That's correct.

20 Q. Okay. Please turn to Page 3. And you have here a
21 statement from the independent accountants, Arthur Andersen?

22 A. That is correct.

23 Q. And that's dated May 15, 1998?

24 A. That is correct.

25 Q. And so was that the date of this financial statement being

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1 issued?

2 A. That is the date that they concluded their field work. The
3 financial statements were likely issued shortly thereafter.

4 Q. Let me ask you now to turn to Page 8 in this financial
5 statement, and I will read you Paragraph 7 and then ask you a
6 question.

7 It says, "Related Party Transactions. During the year
8 ended February 28, 1998, the group loaned money to and borrowed
9 money from its stockholder, affiliated companies, and other
10 related parties."

11 Let me stop there. Was RGHI within the group that is
12 described as stockholder, affiliated companies and other
13 related parties?

14 A. Yes, it would be.

15 Q. Continuing with the footnote 7, "At year end, these
16 balances included net loans receivable of approximately
17 \$231 million due from non-consolidated affiliates."

18 And was RGHI an non-consolidated affiliate?

19 A. Yes, it was.

20 Q. The footnote continues, "Those transactions occurred in the
21 normal course of the group's business. Interest was generally
22 charged at prevailing market rates."

23 Mr. Trosten, so it says here that there was
24 \$230 million in receivables in debt from non-consolidated
25 affiliates. Was that true?

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1 A. It's true that that's what was reported.

2 Q. Was that the true amount of the amount of the money owed
3 from the non-consolidated affiliates?

4 A. No, it was not.

5 Q. And what number had you calculated was the related-party
6 debt that should have been reported here?

7 A. Approximately 405 million.

8 Q. Do you have an understanding as to why Arthur Andersen did
9 not object to or failed to qualify its opinion with respect to
10 the full reporting of the 400-plus million dollars in related
11 party debt to Refco by RGHI?

12 A. Because Arthur Andersen was not aware that the true balance
13 was \$405 million.

14 Q. And did you come to participate in hiding those amounts
15 from Arthur Andersen?

16 A. Yes, I did.

17 Q. Before we leave this footnote, are there any other
18 statements here that you came to learn were false?

19 A. For that year, I don't know if the transactions that
20 occurred were in the normal course of the group's business for
21 '98 and in 1998. I do believe that interest was generally
22 charged at market rate.

23 Q. And you later learned more about those statements in
24 subsequent fiscal years?

25 A. I did.

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1 Q. Okay. Before we talk about those, let me go back to your
2 manager, Mr. Rossi, who had brought your discovery to
3 Mr. Bennett's attention. Did there come a time when Mr. Rossi
4 left Refco?

5 A. Yes, he did.

6 Q. Did you have discussions with him about his decision, in
7 the time that led up to his departure?

8 A. Yes, I did.

9 Q. And what brought about his decision?

10 A. Steve was getting increasingly uncomfortable with the
11 reporting on the financial statements of the related-party
12 balance. He was also getting uncomfortable with certain
13 shifting of expenses and other expense or revenue enhancements.

14 He attempted to change his position to get away from
15 the financial reporting, but the auditors continued to view him
16 in the same role that he had worked on in the past and decided
17 he was no longer going to participate in Refco's activities.

18 Q. You said he tried to change his role to get away from the
19 financial activities?

20 A. That is correct.

21 Q. How did he try to change his role?

22 A. He had a title change from controller to senior vice
23 president in charge of administration, I believe it was called.
24 And all non -- all financial-related activity was now going to
25 go through me, and I was going to report to Phil on those

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1 activities, Mr. Bennett.

2 Q. Did Mr. Rossi tell you why he was trying to change his
3 role?

4 A. Yes, he did.

5 Q. What did he say?

6 A. He told me that he consulted with an attorney and that
7 initially he felt, through his discussions with counsel, that
8 he could stay on with Refco, provided he was not going to be
9 involved in day-to-day accounting activity at Refco.

10 Q. Do you know whether he consulted further with a lawyer as
11 his time at Refco went on?

12 A. I do.

13 Q. What did he tell you about those conversations?

14 A. He told me that because this wasn't working out as his
15 title would have indicated, he was still getting questions from
16 the auditors, he went back to an attorney -- presumably the
17 same attorney, I don't know -- and came back with that he
18 needed to leave the firm because he may be subject to civil or
19 possible criminal exposure.

20 Q. And so he did leave?

21 A. Yes, he did.

22 Q. What did you expect would happen to you when your manager,
23 Mr. Rossi, left?

24 A. I expected to be terminated upon Steve Rossi's departure.

25 Q. Why?

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1 A. Because Steve was no longer going to participate in these
2 activities. Steve had brought me over to work with Refco, and
3 I figured Phil would view me in the same light as Steve and
4 would start anew with an accounting group.

5 Q. Is that what happened?

6 A. No, it's not.

7 Q. What happened instead?

8 A. Within days of Steve's departure, I got a call into Phil
9 Bennett's office and was offered a promotion.

10 Q. What promotion were you offered?

11 A. I was offered a promotion to senior vice president in
12 charge of finance.

13 Q. What did you expect Mr. Bennett would expect of you,
14 promoting you to senior vice president of finance?

15 A. He was going to expect me to continue with the activities
16 that Steve Rossi was unwilling to do.

17 Q. Did you make a decision that you were willing to do that?

18 A. Yes, I did.

19 Q. Why did you make that decision?

20 A. I made that decision because I was going to be making a
21 significant -- significantly more amount of money than I was
22 making in the past, and I believed that Phil Bennett would
23 ultimately get the firm out of the position that it was in and
24 sell the company and repay its obligations.

25 Q. You thought that Mr. Bennett would be able to sell the

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1 company and repay the debt that RGHI owed Refco?

2 A. Yes.

3 Q. In other words, the debt -- RGHI was owned by Mr. Bennett?

4 A. Yes.

5 Q. So it was one step removed from the money that he owed
6 Refco?

7 A. That's correct.

8 Q. So why was it that you had such confidence that Mr. Bennett
9 would be able to sell it?

10 A. In my dealings with Mr. Bennett up until that point, he
11 was, one, if not the most intelligent person I've ever met and
12 worked with. He has a breadth of knowledge on multiple topics,
13 and I believed that I would learn a great deal from him, and I
14 was going to be working directly for him.

15 Q. And you were also going to be making a lot more money, as
16 you said?

17 A. Yes.

18 Q. How much money did Mr. Bennett offer you to go along with
19 the things that Mr. Rossi wouldn't do?

20 A. Ultimately, it was millions of dollars.

21 Q. How much was it, at that time, if you recall, in
22 Mr. Bennett's office, and given this first promotion?

23 A. \$500,000 of base salary in advance on a bonus of
24 approximately \$425,000. I had also received an advance of
25 \$625,000, which Phil forgave that debt and gave me money to pay

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1 the taxes on that debt. So for that year, I made over
2 \$2 million.

3 Q. And you said your compensation grew as your time at Refco
4 continued?

5 A. That's correct.

6 Q. In broad strokes, tell us how the compensation grew as you
7 advanced to the position of CFO?

8 A. At some point during my career, my base salary went from
9 \$500,000 to a million dollars. The firm purchased a residence
10 for me. I later paid that back with other monies that Refco
11 had given to me and, ultimately, in 2004, I received a payment
12 of \$46 million when I left the firm.

13 Q. And I gather what was left of that payment and your other
14 payments constituted the cash that you forfeited to the United
15 States?

16 A. That is correct.

17 Q. And the houses and cars that you forfeited were also bought
18 with those payments from Refco?

19 A. That is correct.

20 Q. So you said that Mr. Rossi left. And what year was that?

21 A. That was in 1999.

22 Q. And how did your responsibilities actually change now that
23 you had this promotion?

24 A. Now, I was fully responsible for running and administering
25 the audit. I became more involved in raising debt for the

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1 company and other related activities relating to Refco.

2 Q. You said that Mr. Bennett had described a short-term
3 pay-down that was made at the end of each -- or made at the end
4 of a fiscal year to conceal RGHI debt?

5 A. That's correct.

6 Q. What, if any, responsibility did you now take for this
7 short-term pay-down at the end of the fiscal year?

8 A. What I would do toward the end of each fiscal year, I would
9 prepare a schedule showing the true and accurate balance of
10 RGHI and affiliates and what the balance that they owed to
11 Refco.

12 I would provide that to Phil Bennett and Sandy Maggio,
13 and they would then go out and execute these short-term
14 pay-downs. They would advise me when they were complete, and
15 then I would run the same set of schedules to determine that it
16 was done accurately.

17 Q. And the reason that you did that, again?

18 A. The reason why I did what?

19 Q. The reason for these short-term pay-downs?

20 A. It was to present Refco's financial statement in a better
21 position than it would otherwise have done.

22 Q. By hiding the full amount of the related-party debt,
23 correct?

24 A. That is correct.

25 Q. Before we go into the details of this role you took on, how

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1 many years did you, yourself, take part in hiding the full
2 amount of RGHI debt to Refco?

3 A. I prepared the -- that schedule that I just referred to
4 from 19 -- fiscal year end 1999 through fiscal year end 2004,
5 and I also prepared it two other times, as well.

6 Q. So for six fiscal years, correct, '99 to --

7 A. Six years '99, 2000, one, two, three, four -- Yes.

8 Q. And you said a couple other times as well?

9 A. Yes, I did.

10 Q. What were those other occasions?

11 A. One was in December 2003, and one was in May of 2004.

12 Q. So let's talk now about your role specifically in these
13 pay-down transactions. Did you have a term that you used in
14 discussing these transactions with Mr. Bennett?

15 A. We called them short-term financings.

16 Q. Financings, short-term financings?

17 A. Short-term financings.

18 Q. What is it you specifically did to prepare the groundwork
19 for these short-term financings?

20 A. What I would do is go through Refco's various entities'
21 financial reports, determine what the actual balance was with
22 RGHI and Refco, or any of its affiliates.

23 I'd aggregate that on a schedule, and I would submit
24 that schedule to Phil Bennett and Sandy Maggio, who would then
25 facilitate these short-term finances or short-term pay-downs.

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1 And then I would prepare that schedule again to
2 determine what the now-reported balance would be and if that's
3 the schedule that I would give to the auditor.

4 Q. You said that Maggio and Bennett would facilitate the
5 transactions?

6 A. Yes.

7 Q. How so?

8 A. They would utilize third parties.

9 Q. Who were these third parties? What was your understanding
10 about them?

11 A. They were hedge funds and they -- Refco, Phil and Sandy,
12 created a series of transactions that would make the
13 related-party receivable appear to be a third-party receivable.

14 Q. And by the way, when you say "Sandy," that was the nickname
15 for Santo Maggio?

16 A. Yes.

17 Q. Let me ask Mr. Smith if we could bring up Government
18 Exhibit 2.

19 Mr. Trosten, I'm going to hand you a laser pointer to
20 give some assistance in your testimony. It comes out of the
21 back end.

22 I'm going to ask you to take a look at Government
23 Exhibit 2.

24 A. I have it.

25 Q. Is this a reasonably accurate depiction of the short-term

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1 pay-down transactions, the financings that we've been talking
2 about?

3 A. Yes, it does.

4 Q. Could you walk us through this chart and just explain in
5 brief how the transactions worked?

6 A. Okay. Toward the end of each fiscal year, Refco -- I don't
7 know if you guys can see it on the screen. Refco would --

8 Q. I think you might be pointing -- At this screen up here.

9 A. Oh. I'm not sure I can see it.

10 Q. We can dispense with that. You can just talk us through
11 it.

12 A. I'm sorry.

13 THE COURT: You're not the only one.

14 A. Refco, which is on the bottom, which is the consolidated
15 entity, would lend money to the customer, which is the hedge
16 fund or funds that we had just mentioned. So that would be the
17 red arrow going from the bottom toward the screen's right.

18 The customer would then lend the money that it
19 received from Refco, and lend it to Refco's parent company,
20 RGHI. And that would have the effect of RGHI paying down its
21 related-party balance with Refco.

22 Q. And so those three phases were carried out before the end
23 of fiscal year?

24 A. That is correct.

25 Q. What were some typical amounts that were used to make these

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Trosten - direct

1 loans?

2 A. They'd be several hundred millions of dollars.

3 Q. How long would these loans be outstanding, typically,
4 generally speaking?

5 A. Approximately a week.

6 Q. And when in relation to the end of the fiscal year would
7 they be paid back?

8 A. The transaction would unwind or be paid back at the
9 beginning of the following fiscal year or early March.

10 Q. And explain to us, using the chart if you'd like, what do
11 you mean by unwind? How did that work?

12 A. Well, what would happen is RGH -- Refco would pay RGHI --
13 or RGHI would pay the customer. The customer would then repay
14 Refco, and now the RGHI balance is back to what it was, say, in
15 the middle of February, then got paid down in late February and
16 was reinstated in early March.

17 Q. So the money that Refco had loaned RGHI for the money that
18 RGHI owed would balloon back up?

19 A. That is correct.

20 Q. What was your understanding as to why customers engaged --
21 why were they willing to participate in these week-long
22 back-to-back loans?

23 A. Because they were, in short, making a profit.

24 Q. How were they making a profit?

25 A. The interest rate that Refco was lending the money to the

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1 customer was less than the amount of interest that the customer
2 was lending that money to RGHI.

3 Q. And so, roughly, what amount of money was the customer
4 making for participating in a short-term loan like this, given
5 the amounts we're talking about?

6 A. Thousands of dollars over the course of a week.

7 Q. And so when these related party -- when these rounds -- I'm
8 sorry.

9 When the short-term pay-downs, as you were calling
10 them, were carried out right before the end of the fiscal year,
11 what percentage or what portion of RGHI's debt was reported to
12 the auditors?

13 A. It was a fraction of what the true balance was.

14 Q. In other words, the true balance, minus whatever had been
15 lent temporarily from this customer or customers?

16 A. That's correct.

17 MR. CHERNOFF: Thank you, Mr. Smith.

18 Q. So based on your own involvement in this scheme, what was
19 Refco's purpose in hiding the amount that RGHI actually owed
20 it?

21 A. The purpose was to continue to receive unqualified opinions
22 from the auditors, which would enable Refco to continue to
23 borrow funds, continue to report financial health to all third
24 parties.

25 Q. Did you have a concern as to what would happen to Refco if

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Trosten - direct

1 it's true debt from RGHI was accurately reported in its
2 financial statement?

3 A. Yes.

4 Q. What was your concern?

5 A. My concern was that if the auditors found out that we were
6 utilizing these customers and others for short-term pay-downs,
7 they could do several things.

8 They could, one, make us disclose the true and
9 accurate balance, which would cause our banks to either not
10 lend to us or demand to have monies repaid to them.

11 Secondly, to the extent that they realized that we've
12 been doing this for several years by the time they found out
13 about it, they could, what they call, pull their opinion and
14 tell everyone involved with Refco's financial business that you
15 can no longer rely on their unqualified opinion because Refco
16 was committing fraud.

17 Q. And what, in simple terms, would have happened to Refco in
18 that event?

19 A. Refco would have to repay all of its debt, would be unable
20 to, and would likely go out of business.

21 Q. Go to what?

22 A. Go out of business.

23 Q. Why was it better for Refco to show its auditors money owed
24 by a customer instead of money owed by RGHI?

25 A. Because the auditor, when they see monies owed by a third

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1 party, they can go and attempt to test that that money is
2 indeed collectible. Well, when the transaction unwound in
3 early March and the auditors would come in in late March, and
4 they ask to see this third-party balance of, an example I used
5 before, several hundred millions of dollars, we would show the
6 auditor that customer's statement as of that day. And it would
7 show that the money was repaid. So, indeed, it was collectible
8 because it had been collected.

9 Q. And so, Mr. Trosten, this concealment of the RGHI
10 receivable was being done to trick the auditors?

11 A. That's correct.

12 Q. And to trick your banks?

13 A. Correct.

14 Q. To trick your customers?

15 A. Correct.

16 Q. Mr. Trosten, you knew you were breaking the law when you
17 were doing this, correct?

18 A. That's correct.

19 MR. CHERNOFF: Your Honor, I'm about to move on to
20 another subject.

21 THE COURT: This might be the right time. Ladies and
22 gentlemen, we'll break for the day now. Remember that we are
23 not sitting tomorrow. Remember also that your attendance will
24 be reported, and you will be paid only for the days that you
25 sit.

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1 Please follow the normal instructions. Leave your
2 exhibits here. Take your books with you. Remember not to talk
3 about the case with anyone else, including your friends at
4 work. Do not do any research on the case. Your coffee will be
5 ready for you Wednesday morning at 9:30, extra tea bags, extra
6 hot water.

7 JUROR: Thank you.

8 THE COURT: Thank you very much for your attention
9 today and Friday, ladies and gentlemen. We're through the hard
10 part.

11 (Jury exits)

12 THE COURT: Let us know, Gilbert.

13 THE DEPUTY CLERK: Yes.

14 THE COURT: Thank you. Anything else on the record,
15 counsel?

16 MR. CHERNOFF: We do have a couple of short matters
17 related this witness' testimony, which we could take up on
18 Wednesday morning, in light of your Honor's other commitment.

19 THE COURT: That would be helpful. Please. 9:30?

20 MR. CHERNOFF: Yes, your Honor.

21 THE COURT: Thank you. Good afternoon, friends.

22 MR. SCHWARTZ: Good afternoon, your Honor.

23 MR. CHERNOFF: We can even do 9:45, we think.

24 THE COURT: You even think 9:45? I don't know.
25 You're not so trustworthy on this. All right. I'll be ready

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1 when you're ready. Let me know.

2 MR. SCHWARTZ: It's a very quick issue.

3 MR. CHERNOFF: Thank you.

4 THE COURT: Thank you.

5 (Adjourned to October 17, 2012, at 9:30 a.m.)

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GOVERNMENT EXHIBITS

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1701S	1101
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855	1113
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6001	1132
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DEFENDANT EXHIBITS

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